



Local Planning Agency

**Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931
Tuesday, June 16, 2026**

Agenda

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 - May 8, 2026
- B. Local Planning Agency - May 12, 2026

VI. PUBLIC COMMENT

VII. PUBLIC HEARINGS

- A. VAR20260070, 5520 Estero Blvd.

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20260070, REQUESTING A VARIANCE FROM LDC TABLE 34-3 TO REDUCE THE REQUIRED SIDE SETBACK TO ALLOW A BALCONY TO EXTEND 2 FEET INTO THE REQUIRED 6.5 FOOT SIDE SETBACK FOR SINGLE FAMILY RESIDENCE IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 5520 ESTERO BLVD, GENERALLY REFERRED TO AS STRAP NUMBER: 33-46-24-W1-00205.0170 IN FORT MYERS BEACH; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- B. VAR20250260, 100/102 Bay Mar Drive

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250260, REQUESTING A VARIANCE FROM LDC SECTION 34 TABLE 34-3 - FOR THE PROPERTY LOCATED AT 100/102 BAY MAR

DRIVE GENERALLY REFERRED TO AS STRAP NUMBER 29-46-24-W2-00155.1010 IN FORT MYERS BEACH, TO REDUCE THE REQUIRED 20-FOOT REAR SETBACK BY 7.9 FEET TO ALLOW A REAR SETBACK OF 12.1 FEET FOR AN ENCLOSED ACCESS STAIRCASE EXTENDING TO THE SECOND FLOOR OF A TWO-FAMILY RESIDENCE WITHIN THE RESIDENTIAL CONSERVATION (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.

C. VAR20260056, 21531 Widgeon Terrace

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20260056, REQUESTING A VARIANCE FROM LDC SECTION 34-638(d)(3)c.3.(iii) TO REDUCE THE REQUIRED 25-FOOT WATERBODY SETBACK BY 8.97 FEET AND ALLOW A 16.03-FOOT WATERBODY SETBACK FOR A NON-ROOFED SWIMMING POOL FOR AN EXISTING SINGLE-FAMILY RESIDENCE IN THE RESIDENTIAL CONSERVATION (RC) FOR THE PROPERTY LOCATED AT 21531 WIDGEON TERRACE GENERALLY REFERRED TO AS STRAP NUMBER 34-46-24-W1-00001.001B IN FORT MYERS BEACH; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

D. Ordinance 26-02; DA20250277, 6890 Estero Blvd. (Old Wyndham Garden)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING OR DENYING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 6890 ESTERO BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 03-47-24-W1-00003.0010 OWNED BY FMBH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH TWO PHASES AND SEVEN DEVIATIONS FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY TO ALLOW RESTAURANT, ENTERTAINMENT, COMMERCIAL PARKING AND RECREATIONAL AREA; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- E. Ordinance 26-10, CPD20250286, 1207 Estero Blvd. (Silver Sands Resort)
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING A REZONING OF PROPERTY LOCATED AT 1207 ESTERO BLVD, FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0150D.0050 FROM DOWNTOWN ZONING DISTRICT TO A COMMERCIAL PLANNED DEVELOPMENT WITH 11 DEVIATIONS TO ALLOW FOR A 60-UNIT HOTEL, AND 2,500 SQUARE FEET OF COMMERCIAL RETAIL SPACE AND 46 PARKING SPACES; 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
6231 Estero Boulevard
Fort Myers Beach, FL 33931**

Minutes

Friday, May 8, 2026

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members Present: Chair Anita Cereceda, LPA Members James Boan, Jim Dunlap, Don Sudduth, Ed Schoonover, and Jane Plummer.
Chair Cereceda noted that LPA Member Eckmann's absence was excused.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

LPA Member Dunlap suggested that there be a continuance until April 12, 2026, for the public hearing items. There was discussion among the Local Planning Agency members about their and LPA Member Eckmann's availability. LPA Member Sudduth stated that, for this meeting, he would need to leave around 1:00 p.m. Mr. Boan said that the amendments have not yet been reviewed by staff and that there were some inconsistencies. He would like additional discussion with the developer on staff input. He requested that the agency does not discourage the members of the public who are attending this hearing and allow them to comment before deciding on a continuance. LPA Member Schoonover noted that he was available for both dates. Town Attorney Stuparich also acknowledged public attendance and stated that continuance must be moved and considered for each item, one by one. LPA Member Dunlap stated that he has checked with staff and the Town Attorney that there would not be any disruptions to the application process if they continued on April 12, 2026. LPA Member Sudduth asked if staff would be ready then. Community Development Planner, Jason Green, asserted that staff should not be a barrier to the agency's decision on when to consider these items. He does not foresee any revisions or updates to the staff report, as he believes that it would not be a good use of town resources to rush and provide these numbers. Town staff will be available to answer questions and provide necessary information during the meeting. Town Attorney Stuparich noted that they may wish to ask for input from the applicant. Mr. Wilson voiced his support for a continuance and his wish for full

attendance of the agency, given the importance of this project. There was additional discussions on availability. There was general agreement that any continuances would be considered later in the meeting and would not impact the agenda as presented.

LPA Member Plummer moved to approve the final agenda, seconded by LPA Member Boan. The motion carried unanimously.

V. APPROVAL OF MINUTES

A. Local Planning Agency - April 14, 2026

Mr. Dunlap moved to approve the minutes of April 14, 2026, seconded by Mr. Boan.

The motion carried unanimously and without any objections.

VI. PUBLIC COMMENT ON NON-AGENDA ITEMS

Chair Cereceda asked for any public comment on non-agenda items.

Tom Brady expressed his concern for the optics and believed that LPA Member Eckmann's attendance cannot be confirmed without a violation of Florida Sunshine Law. He added that some members of the public flew in for the purpose of this meeting.

Chair Cereceda noted that Mr. Dunlap was referring to Mr. Eckmann's statements in a previously recorded meeting of the Local Planning Agency.

Dave O'Brian asked the Chair if he would be able to comment on the legislative aspect as part of the regular agenda, even though it's not a quasi-judicial hearing. She responded affirmatively. He also confirmed with her that a public notice was not sent out due to this being a continuance and that members can speak to the matter today or submit items to be part of the record. Mr. O'Brian, who was concerned about due process, commented that the e-mail address in the original public notice was invalid. Chair Cereceda stated that this has since been corrected.

Cameron Post, a property owner, indicated that he flew in today to hear the presentation and public comment. He said that he would be disappointed if he missed some of these discussions. He believes that, especially with a quorum present, there is no reason to delay.

Council Member, Rebecca Link, expressed that she would ideally like to see full attendance. She noted that the rules for quorum exist for a reason and that there are no guarantees. She asked that the agency respect the time that everyone had put in to attend this meeting. She emphasized that the body must comply with procedures and not engage in a strategic process.

VII. PUBLIC HEARINGS

Town Attorney Stuparich indicated that the agency would need to open the public hearing for each item and that the body would then have discretion on how to proceed from there. She recognized that there is more flexibility on the first two items, as they are legislative in nature. Public comment and input from the

applicant can be received before any motions for continuance are made. LPA Member Sudduth noted his preference for allowing the public to speak. Mr. Yovanovich noted that the applicant would like to hold off from presenting until a full complement of the members is present. LPA Member Sudduth remarked that they can confirm with LPA Member Eckmann of his availability on April 12, 2026, but that there are no guarantees. LPA Member Plummer noted that the items can be considered, so long as there is a quorum. The absence of one member would not prevent the agency from making a decision. Chair Cereceda outlined the process for the public hearing items and requested that the applicant notify the agency when they wish for a continuance. Mr. Yovanovich stated that they would like a continuance on all items. Town Attorney Stuparich reiterated that the public hearing should be opened for each item and continuance should be addressed separately for each matter.

- A. Ordinance 26-04; CPA20240067, 6200 Estero Blvd., Outrigger Resort Mixed-Use: CPA-Text

COMPREHENSIVE PLAN TEXT AMENDMENT (LEGISLATIVE)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE TEXT IN THE FUTURE LAND USE ELEMENT, IN THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN-2045 ADOPTED DECEMBER 1, 2025, TO INCLUDE OUTRIGGER RESORT MIXED-USE LAND USE CATEGORY; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the ordinance. She confirmed with the applicant that there will not be a presentation. Green from Community Development did not have any remarks.

Chair Cereceda provided a brief overview of the process to speak and noted the importance of the comprehensive plan amendment. She swore in all who wished to testify. Town Attorney Stuparich stated that this was not necessary for the legislative items but would have been needed for the quasi-judicial hearings.

Public Comment:

David Nusbaum voiced his support for the project. He stated that, if time is considered to be a merciless thief, hurricanes would be its accomplice. He noted the loss to the community that was caused by these storms. The town has spent time on its restoration, and he recognized that it was fortunate that the town opened back up so quickly. He encouraged those who claim that the south end of the island is booming to drive down to the area, from here to the new bridge, and view the empty lots and chain link fencing. He announced that one of the two establishments serving alcohol at Santini had closed.

There was a notice that one of the other major projects is looking to either obtain another investor or sell the property. He asserted that the properties in this area are suffering because of the lack of bars, restaurants, and people. Mr. Nusbaum said that he has sent in letters on this subject. He added that many places have not shown any signs of action, despite having approval for

development. He pointed to the need for commitment to move forward. He requested that the agency expedite this matter, for the sake of recovery for the south end of the island.

Marsha O'Brian, a full-time resident who lives next door to the proposed project, stated that she purchased her condominium with the expectation that the adjoining property would comply with the comprehensive plan and the Land Development Code. She voiced her opposition to the development. She believed that the value of her property would decrease due to the noise generated from the tiki bar, which would be 50 feet from their pool. There would also be sound from the outdoor restaurants and pools. She asserted that she would not be able to enjoy the use of her balcony. The lighting of the adjoining property would also disrupt their ability to stargaze. She additionally expressed her concerns about the smell and the disruptions to the sightline, views and privacy. Her second reason for opposition was increased vehicle and golf car traffic in the area. She is against the proposed seawall due to the unknown and potential damage to their property. She also voiced her opposition to the tiki bar being fifty feet from their pool. She noted that many of the residents of her condominium have grandchildren, who should not be subject to loud music or adult language. Her final reason revolved around the increase in trespassers. She asked the agency to vote against this proposal and to not recommend the item to Council.

David O'Brian asked if there was already a continuance and if there are opportunities to speak in the future. Chair Cereceda noted that the applicant will be requesting that it be continued. All comments, in this and previous meetings, will be part of the record. He confirmed with the Chair that all items submitted are received and read. Mr. O'Brian chose not to speak at this time. Cameron Post expressed his appreciation of this forum and the opportunity to speak. He noted that he and his wife own a property near the proposed development. He is concerned about the scale of the project. He stated his wishes to learn more about the process, town, and community, and to provide time to see if there can be a reasonable middle ground. He asserted that there were no meaningful changes since the previous meeting, stating that there has not been a substantial reduction in density. He believed that most of the revision revolved around redistribution. He worries about the proposal's cumulative impact on traffic, flooding, infrastructure, and overall compatibility. He is supportive of investment and redevelopment but emphasized the importance of sustainability in the long term. He commented that there should be a path within the existing framework.

Carol Stire, a full-time resident, provided that London Bay distributed letters in support of the development. The company had distributed these at a previous town hall meeting and asked participants to fill them out. During that meeting, she noted that London Bay required that a certain number of units be sold before construction begins. She pointed to the lengthy process for pre-sale. She noted that, during the town hall session, the firm noted that it would be a minimum of five years for completion and that they would employ 300 individuals. She asserted that other developments would have already

occurred by the time this project is finished. She also questioned how these positions would be filled during peak season. She mentioned other alternative solutions and stated that, as development continues, less residents will stay or be able to afford to live in the area. She referred to the situation in Sanibel and the challenges it has in supporting its current infrastructure. She stated that small deviations are allowed to the comprehensive plan, but not significant ones. She believes that London Bay should have a back-up plan and that residents should not be responsible for securing their return on investment.

Lori Webster provided a historical overview of the incorporation of the town and its intention against overdevelopment. She believes that this proposal is not responsible development and has so much deviation from the existing framework that there needed to be a proposed rewriting of the comprehensive plan. She pointed to the lengthy timeline. She noted the existing public benefits and that the ones proposed are for the company, not for the residents. She asserted that the applicants had to reinvent the computation methods. She argues that the tiki bar will not be built and is solely used to garner support. She said that she was never invited to a public forum and that the ones that were held were small and exclusive. She concluded by providing the number of currently available condominium units and asking why any more would be needed.

Lisa Wiseman, a full-time owner, noted that she was present for two of London Bay's presentations, read the plan and information available on the company's website, and reviewed social media conversations on this matter. She voiced her support and asked that the agency consider the facts, not the emotions. She requested that the body make a decision that is aligned with the present and future of this community.

Tod Capella, also a full-time resident, provided he attended both presentations. He asserted that the proposal does not have any features that the town would need. He remarked that the tiki bar will not occur and will not be approved by FEMA or the state. He wishes for the agency to focus on the facts and said that this agency and Town Council are responsible for preventing this development from happening. He believes that this proposal calls for a rewriting of the comprehensive plan. He reiterated that the majority does not want this.

Beth Burwinkle stands before the agency to provide her view of opposition to the project, as it currently exists. She disputed the developer's statement that this property is within a high-rise section of Fort Myers Beach. She views the proposed heights as an insult to the project's neighbors. She stated that she had provided a comparable land use analysis to the town that she believes gives a real outline of land costs and project feasibility. She argued that the company's return on investment is not the responsibility of the residents and should not be considered as a valid reason. She likened the proposal to a blank check. She noted that London Bay knew the comprehensive plan and state law when the company bought the property. She requested that the agency make them comply with the existing framework and calculate the

FAR value properly.

Ellie Bunting requested that the body vote against this matter. She asserts that this proposal is against the comprehensive plan, which was designed against overdevelopment. She noted the consequences of growth in the 1970s and 1980s. Ms. Bunting referred to the town's vision, one that respected the limitations of a small barrier island and prioritized resilience, safety, and quality of life. She pointed to the unique characteristics of the island, mentioning that there is no need to sacrifice the comprehensive plan for projects like this. She remarked that the tax base is already secure and asked for the agency to vote "no."

Maureen Mahoney, an owner of a condominium next to the property, stated that she has been part of this community for a long time. She provided four concerns. Her first was density. She asserted that this island would not be able to support the infrastructure. Her second issue was ostentation. She believed that the restaurants the property provides would not be what the community is looking for. Her third item was the neighborhood. She emphasized the importance of quietness in this area of the island. Her last concern is about traffic. She noted the hectic nature during peak season. She remarked that the list she provided spells out the acronym "DON[']T," which she hopes will help the agency remember her request to not vote for these changes.

Karen L.J., also an owner of a condominium near the project, provided a brief history of the town of Fort Myers Beach, its incorporation, and its intent against situations like these. She noted that the company purchased the property with the knowledge of the building restrictions. She listed the negative impacts caused by rapid population growth, including severe traffic congestion during peak season and a strain on community resources. She highlighted the availability on existing, unoccupied homes and units. She referred to the last meeting and the discussion on higher tax bases. She is against comparing the heights between the proposal and Pointe Estero, the latter of which was built before the current building restrictions. Residents will have to suffer the consequences of increased density on this barrier island. She also brought up the fact that they are mandated to accommodate for the beloved sea turtles and bird nesting. It is her opinion that London Bay's proposal will further limit residents with parking and traffic problems. The scenic views, which she had thought were guaranteed when her family purchased their property in the 1980s, would also be lost. She said that the amenities the project offers would most likely be reserved for their residents and guests, leaving little opportunity for locals. She voiced her opposition.

Ellen Vaughn, a resident on Estero Boulevard, referred to this area as the suburban area of the island. She wished to direct her comments to the representatives of London Bay. She is not opposed to building a 15-story building, but she is concerned about the height. She understands that high ceilings are desired. She compared this project to when TPI came forward with what eventually became Margaritaville. There was a lengthy process in that case, with multiple listening sessions and changes to the design. An

organization was actually created for this matter, in support of TPI. They went neighbor to neighbor and had petitions printed, with costs coming from their own pockets. The group also submitted these to the Town Council. She mentioned the lengthy Council meetings and the overflow areas for attendees. She highlighted the support for Margaritaville and acknowledged the property's positive impact on the town. She believes that London Bay now has the opportunity to make a similar contribution.

Tom Brady, a full-time resident and associated with Protect FMB, stated that the applicant is asking the town for extraordinary concessions, including amendments to the plan that he believes are essentially spot zoning. He remarked that, at the last meeting, he requested that the applicant not discuss the economic advantages in their presentation, which they still did. He believes that this was misinformation. He asserted that the developer stated that these facts were undisputable but then went silent when challenged. Mr. Brady argued that this alone should give the Town Council hesitation. He does not believe there should be so much attention awarded to this case. He acknowledged the amount of time staff has spent on this issue but commented that they should shift to other items that deserve more focus. It is his belief that the public deserves permanent, enforceable concessions for the benefit of a majority of the residents. He cited the voices of opposition from the neighbors, who he said should carry more weight than those who will not suffer the daily impacts. He urged the agency to reject the proposal and require compliance with the existing comprehensive plan and Land Development Code.

Nancy Walker, also a full-time resident, requested the body to consider the facts. She noted the Local Planning Agency's duty to uphold the comprehensive plan, which should not be changed based on the wishes of one entity. She noted the developer's request for deviations. She believes that it is time to recognize that the Outrigger is not coming back. She has little interest in the tiki bar. She mentioned the limited public benefits and provided that Santini may be finished by the time this project is completed. It is of her belief that London Bay will create their own private beach club, which will not be for the local residents. She requested that the body face the facts and let the company build something, but not what is currently presented.

Walter Pilkens provided that the area contained low density housing, no more than four families an acre. He attended the first meeting at DiamondHead Beach Resort, and his first impression was that the project would be similar to Margaritaville. However, the company then discussed the big condominium tower. He is starting to believe that this was the plan all along.

Steve Johnson, a resident, expressed his concerns about the discussions on attendance and votes. He noted that it was not even six months ago that there was a historical recall, which was caused by overdevelopment. He asserted that this project was too large in scale. He had originally thought that there was a covenant that would protect homeowners with their investments. He believed this development would be the complete opposite of that. It was his opinion that this project was absurd and that it should be

rejected. While recognizing the need for development, he said that this current scale is not appropriate for this area. He emphasized the importance of preventing special interests from running this island. He referred to the recent fish kills and the strain on the stormwater system.

Cindy Johnson, who is also a resident, voiced her opposition. She remarked that the amendment should not cause detriment to the surrounding properties. She cited Gulfside Twelve, which does not have high density, as an example of recent positive development. She listed places where views are promised in perpetuity. She commented that the properties north of London Bay would suffer. She noted that the project will go into the town's storm water system, and those waters will then go into the canals. She pointed to Miami and its similar situation of flooding on low-lying streets. Ms. Johnson asserted that individuals are fleeing due to this. She also mentioned the negative impacts on wildlife, which is a primary motivation for tourism for this area. She urged the agency not to vote for this amendment.

Barbara Hill, who lives in Fort Myers Beach, voiced her position of opposition. She noted that she and her family have lived here for over 70 years. She reported on the recent positive developments to the island. She believes that this project is not a smart development. It is of her opinion that this is not in keeping with the comprehensive plan. She said that it was too dense, which she provided should be sufficient justification to prevent it from moving forward. She asked the agency to vote no.

Dave O'Brian asked if he could speak at this time, noting that he previously only asked questions. Chair Cereceda asked for any objections to allowing him to speak. There were none. He asserts that all owners of Gulfside Twelve are opposed, despite only a few being present here today. He said that London Bay never contacted them directly for their input. He stressed the importance of getting feedback from the nearby residents. He commented that the developer is presenting a plan that it expects the Town Council and Local Planning Agency to adjust until there's enough votes for approval. He called this process arbitrary and believed that there was never a goal to follow the comprehensive plan or make efforts to minimize the number of variances needed. He compared the costs of Gulfside Twelve, a nearby parcel, and the Outrigger property, arguing that these values show the plausibility of lower building heights. It is his belief that the proposed maximum height requirement is arbitrary and that the goal should be the lowest economically feasible height. He expressed his opinion that there is a lot that can be done to further comply with the comprehensive plan.

Public comment closed.

Chair Cereceda asked Mr. Yovanovich if he would like to report the submitted changes. After Town Attorney Stuparich informed him that everything in today's meeting would be part of the ultimately compiled record, he requested a continuance and noted that he will report on the changes at that later time. LPA Member Sudduth recommended that the applicants present the different scenarios that the company reviewed so that everyone can have a better understanding of what the various options would look like. Mr.

Yovanovich stated that they could present that on April 12, 2026, and agreed that this would be helpful for the process. They will report on the changes and the by-right options then. LPA Member Dunlap suggested that they explore opportunities under Florida's Live Local Act. Mr. Yovanovich said that they would be prepared to show all options that they believe are legally available to them, if not approved.

LPA Member Dunlap moved for a continuance of this hearing to a date certain of May 12, 2026, at 9:00 a.m., seconded by LPA Member Schoonover.

The motion carried 4-2, with LPA Member Plummer and Chair Cereceda dissenting.

- B. Ordinance 26-03; CPA20240067, 6200 Estero Blvd, Outrigger Resort Mixed-Use; CPA- Map

FUTURE LAND USE MAP AMENDMENT (LEGISLATIVE)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH FUTURE LAND USE MAP-2045, ADOPTED DECEMBER 1, 2025, FOR THE PORTION OF PROPERTY LOCATED AT 6200 ESTERO BLVD, IDENTIFIED AS STRAP # 33-46-24-W3-00012.0000 THAT IS LANDWARD OF THE 1978 COASTAL CONSTRUCTION CONTROL LINE, IN FORT MYERS BEACH; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the ordinance. Town Attorney Stuparich asked Mr. Yovanovich if the applicant is still requesting that the testimony from the prior matter be incorporated by reference. He responded affirmatively. The Town Attorney explained that this would mean that the public's comments will be duplicated for this particular legislative item, as applicable. There is, thus, no need to testify again, though the opportunity is available. Mr. Green from Community Development and Mr. Yovanovich both did not have remarks.

Ellen Vaughn emphasized the importance of a property's footprint. She noted that the 12-story building she lives in had several view corridors and a large amount of green space. That property has a relatively small footprint. She recommended that the proposal provide corridors and green space, which she believes will help to garner more support.

Public comment closed.

LPA Member Dunlap moved for a continuance of this hearing to a date certain of May 12, 2026, at 9:00 a.m., seconded by LPA Member Schoonover.

The motion carried 4-2, with LPA Member Plummer and Chair Cereceda dissenting.

- C. Ordinance 26-05, CPD20240061, 6200 Estero Blvd., Outrigger Resort Mixed-Use

REZONING REQUEST (QUASI-JUDICIAL)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING A REZONING OF PROPERTY LOCATED AT 6200 ESTERO BLVD, FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBER 33-46-24-W3-00012.0000 FROM A PREVIOUSLY APPROVED COMMERCIAL PLANNED DEVELOPMENT (OUTRIGGER BEACH RESORT) TO A COMMERCIAL PLANNED DEVELOPMENT WITH 12 DEVIATIONS TO ALLOW FOR A 46 DWELLING UNITS; 150 HOTEL ROOM AND 46000 SQUARE FEET OF COMMERCIAL USE AND 340 PARKING SPACES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the ordinance. Town Attorney Stuparich explained that this is a continued quasi-judicial item and that it is not necessary for her to explain the process, as this was done in the previous meeting. She confirmed with Town Clerk Baker that notice was properly provided. No conflicts were disclosed. LPA Member Dunlap provided that he attended the original London Bay proposal at the company's sales center. He was also present at the presentation at the same location for the most recent proposal, before the changes. Mr. Dunlap additionally attended a community meeting on the south end of the island where the entire proposal was presented to several members of the neighborhood, along with the opening session of the development the business had on Estero. He got a chance to speak with employees and potential residents on the promises made and kept, as well as the anticipation of the full proposal, including amenities that they represented to the community that would be built. Mr. Sudduth disclosed that he met with Mr. Wilson and his team several times in-person and once or twice virtually. These date back to when the original proposal, which has been pulled. LPA Member Plummer stated that she went to one presentation when the plan first went out. Mr. Boan went to the original proposal six or eight months ago at DiamondHead Beach Resort. He received numerous e-mail communications from residents, both for and against the project. Mr. Schoonover attended two meetings with London Bay, one in-person and one via Zoom, and noted that he received a large volume of e-mails. He has had conversations with multiple people, both supporting and opposing the matter. LPA Member Sudduth asked Town Attorney Stuparich if e-mail communications are considered to be exparte. She responded that they are and that any type of communication, text, e-mail, in-person, that transpires outside of today's hearing would fall under the definition, for purposes of fairness and transparency. LPA Member Sudduth added that that he also

received numerous e-mails and has had several conversations with residents, visitors, and his family. LPA Member Dunlap stated that he has similar communications and wished to confirm that all e-mail messages received through Town Clerk Amy Baker are part of the public record. Chair Cereceda responded affirmatively. Town Attorney Stuparich also stated that they would be in the record and that the Town Clerk has put in a lot of time and effort to ensure that it was complete. LPA Member Plummer also amended her disclosures to include similar communications as LPA Member Dunlap and LPA Member Sudduth. Chair Cereceda met with Mr. Wilson via Zoom, received several e-mails, and spoken with an enormous amount of people. She listed some individuals who have had an impact on her thoughts: Pat Vanness, Tom Torgerson, Rebecca Link, Scott Safford, Bill Veach, and Jesse Titus.

She spoke again with Mr. Wilson in the fall. Another individual was present at this meeting. The conversation was general in nature with a 30,000-foot view of not only the project, but also the environment on Fort Myers Beach. Mr. Wilson called her around two weeks ago and asked her if she believed the height requirement was settled. Chair Cereceda referred him to Mr. Sudduth. He then asked her about the FAR value, which she declined to discuss.

Mr. Yovanovich requested that the same comments are brought forward to this hearing so that individuals did not have to repeat their speeches. He noted that he will also be doing this for the upcoming items. Mr. Green from Community Development and Mr. Yovanovich both declined to make remarks.

Public comment:

Tom Brady commended Chair Cereceda on her explanation during the disclosure of ex parte communications. He stated that the developer presented 15 pages of economic information, which they deemed to be undeniable. He disputed what was included in the numbers, such as the school, library, and fire department. He commented that these claims were not based on the incremental impact. He also challenged the amounts provided for impact fees, matching costs, construction wages, and ongoing wages. In terms of public benefits, he said that beach access already exists. He mentioned that the beach bar is not approved and that there's no commitment for the wave mitigation wall. Mr. Brady brought up that there was no legal document ensuring the water taxis would not enter the canal and that the park resembles more of a walkway. He highlighted the high costs of the restaurant.

Public comment closed.

LPA Member Dunlap moved for a continuance of this hearing to a date certain of May 12, 2026, at 9:00 a.m., seconded by LPA Member Schoonover.

The motion carried 4-2, with LPA Member Plummer and Chair Cereceda dissenting.

- D. SEZ20240112, 6200 Estero Blvd., Outrigger Resort Mixed-Use: Special Exception

SPECIAL EXCEPTION - CONSTRUCTION IN EC (QUASI-JUDICIAL)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240112 TO ALLOW RECONSTRUCTION OF A MAJOR ACCESSORY STRUCTURE IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 6200 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the resolution. Town Attorney Stuparich noted that the developer was the same and that there were no disclosures in the previous item. She asked for any ex-parte communications related to the special exception. There were no disclosures. Chair Cereceda commented that there were numerous discussions on whether this would be permitted, as opposed to whether it should be permitted. Jason Greene from Community Development did not have any remarks. Mr. Yovanovich declined to speak but did request that the record of all prior conversations and testimony from the public be carried forward.

Public comment:

After confirming the currently pending item, Nancy Walker, a full-time resident, noted that a tiki bar is not necessary if this development was approved.

Cindy Johnson noted that items were previously approved in the EC zone. She highlighted that this was new construction and emphasized the need to protect the environmentally critical area. She stated that they do not know what will happen in the future in terms of weather and legislative actions to protect the island. She believes that nothing else should be approved in the EC zone.

Dave O'Brian, of GulfSide Twelve, asserted that the original location of the tiki bar was placed more centrally within the property, almost entirely behind the 1978 Coastal Construction Line. He stated that the variance and special exceptions request that it be reconstructed on an accessory building location on the south border of the property and seaward of that line. The bar would be within 50 feet of GulfSide Twelve, and there would be no noise buffers. He said that this would adversely affect residents and create numerous calls to town and the police for noise reduction. He recommended that the developers go back to the original location. He believes that the variance and special exceptions should not be approved, as there is no hardship for London Bay to place it there. He presumed that the company moved to an

accessory building location so that a larger tiki bar can be built. He stressed that this is one of the biggest items of opposition from GulfSide Twelve, along with the next two pending items.

Steve Johnson noted the purpose of the environmentally critical zone. He argued that development in this area would be pure encroachment and disrupt the beach, which is the town's and the community's valuable asset. Mr. Johnson stated that this should not be allowed. He referred to a prior attempt in that area: a boardwalk that was destroyed, with debris being thrown onto nearby homes. He commented that this should not happen in the future and that the wildlife needs a place to live. He urged the agency to vote no on any development in the environmentally critical zone.

David Nusbaum said that the complex that he lives in has come before this body twice to develop in the environmentally critical zone. They proposed to build a retaining wall, which later survived hurricanes, tropical storms, and a tsunami, and they also submitted approval for construction of a tiki bar. He noted that the second case was a replacement. He provided that this section of the beach has a 300-yard sand beach to the mean-high water mark. He agreed with prior remarks that there may be benefits to placing the tiki bar in a more central location but said that preventing any building, including a replacement of what had previously existed, is a disservice to the community. He believed that there was a difference between building what was there and constructing a new structure.

Public comment closed.

LPA Member Dunlap moved for a continuance of this hearing to a date certain of May 12, 2026, at 9:00 a.m., seconded by LPA Member Schoonover.

The motion carried 4-2, with LPA Member Plummer and Chair Cereceda dissenting.

E. SEZ20240112, 6200 Estero Boulevard, COP
SPECIAL EXCEPTION - COP (QUASI-JUDICIAL)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240112 TO ALLOW EXPANSION OF CONSUMPTION ON PREMISES IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AS PER LDC SECTION 34-1264. (G)(1). FOR PROPERTY LOCATED AT 6200 ESTERO BOULEVARD; PROVIDING SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the resolution. Town Attorney Stuparich noted that there are no disclosures for conflicts. She asked for additional ex parte communications regarding this specific special exception. No disclosures were made. The Town Attorney also referred to the previous request to incorporate the prior record by reference. Jason Green from Community Development and Mr. Yovanovich both declined to speak.

Public Comment:

Dave O'Brian voiced his opposition to expanding alcohol service into the environmentally critical zone. He listed some of the potential negative impacts: damage to dunes and vegetation, increased litter, and disruption to wildlife. He noted that GulfSide Twelve residents had already experienced the adverse effects when the beach access path opened. He commented that opening up the area to alcohol consumption would make the situation worse. He expressed his view that the beach should be safe, clean and alcohol-free. He presumed that the reason for this item is so that the developers can extend service from the tiki bar or to the cabanas. He concluded by saying that it would not make sense to allow a carve-out for one area of the beach.

Cindy Johnson, a resident, had measured the turtles and how far they were from the buildings and the water. She noted that there would never be a stationary amount of sand. She provided that this particular area was fortunate that it did not experience the worst impacts of Hurricane Ian. She said that the Outrigger property took sand, while some other properties did not. The area had flooded last year. She believed that the state would not give as much funding for sand in the future, especially if there are seawalls and no dune system. She wishes that the agency would consider what would happen to this area and who would be putting in the additional sand.

Referring to statements by J.R. Evans and FGCU, she emphasized the importance of a multiple dune system in protecting upland properties. She noted the current governor's actions and how this may stop the state from coming back and replacing the sand. She acknowledged that this was more complicated than simply placing a tiki bar on the beach.

Nancy Walker, referring to Cindy Johnson's previous remarks, believed that there is a successful legal challenge. She noted that raking is allowed.

David Nusbaum stated that he has owned his property Island Winds since it was incorporated in 1972. The deed stated that they can go to the mean-high water mark line on both sides of the property. He has letters from two different coastal engineers stating that his property has experienced accretion. Mr. Nusbaum also received a similar communication from FDEP. They have gained sand throughout all of the hurricanes. He stated that this was the basis for the rationale for his comments. He clarified that he believed that they should be able to rebuild what was originally there and that he did not make any remarks on whether the property should serve alcohol. He remarked that the Outrigger property is most likely not going to sell alcohol out on the beach and is trying to reclaim their right to sell such beverages where the original tiki bar was.

Cameron Post addressed the expansion on consumption of premises and noted that this was a family area.

Lori Webster stated that this is not a build back. The current developers were not owners when the tiki bar existed. She also noted the different location.

Marsha O'Brian provided that it is illegal to consume alcohol on the beach and commented that this exception should also be illegal.

Public comment closed.

LPA Member Dunlap moved for a continuance of this hearing to a date certain of May 12, 2026, at 9:00 a.m., seconded by LPA Member Schoonover.

The motion carried 4-2, with LPA Member Plummer and Chair Cereceda dissenting.

F. VAR20250299, 6200 Estero Blvd. (Outrigger Redevelopment)
VARIANCE (QUASI-JUDICIAL)

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR 20250299, REQUESTING A VARIANCE OF 15 FEET REDUCTION TO THE REQUIRED 25-FOOT SIDE YARD SETBACK FOR AN ACCESSORY STRUCTURE TO THE OUTRIGGER RESORT IN THE EC ZONING DISTRICT TO ALLOW A 10 FOOT SIDE YARD SETBACK IN ORDER TO ACCOMMODATE HISTORICAL LOCATION OF THE TIKI HUT, FOR THE PROPERTY LOCATED AT 6200 ESTERO BLVD, GENERALLY REFERRED TO AS STRAP NUMBER: 33-46-24-W3-00012.0000 IN FORT MYERS BEACH; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the resolution. She asked for any further disclosures for ex parte communications and conflicts. The Chair noted that she did have several people ask about the historical location of the tiki bar. Jason Green explained that the title comes from the applicant's description and agreed that there may be some debate on the accuracy of the terminology. He did not have any other remarks. Mr. Yovanovich, after confirming with Town Attorney Stuparich, requested that all the public comment made be part of this hearing.

Public comment:

Ellen Vaughn stressed the need for a smaller footprint. She urged for green spaces and a smaller footprint.

Dave O'Brian voiced his opposition to this variance for the same reasons as the special exception. He believes that the wording for the historical location is not accurate. He presumed that the new beach access, which would abut the existing one, is intended to funnel the public through the tiki bar. He expressed his opinion that this would not be in the public's interest. He also pointed out that there is an active osprey nesting site on the south side of the property, which is apparently marked to be cut down for this planned path. He noted the importance in protecting this habitat.

Janet Gottlieb was sworn in, as she was not present for that earlier portion of the meeting. She noted that when her parents sold their property, the sellers wanted a variance of about 20 feet from the beach access. They wanted to expand the structure to the entire lot with an elevated pool. Their request was

denied due to view corridors being sacrosanct. She believes that this should apply in this case and that there is no necessary reason to encroach on the edges of the property. She expressed her view that there needed to be maintenance of the actual standards in the Land Development Code and in all planning documents for Fort Myers Beach. She stated that she was in opposition.

Public comment closed.

LPA Member Dunlap moved for a continuance of this hearing to a date certain of May 12, 2026, at 9:00 a.m., seconded by LPA Member Schoonover.

The motion carried 4-2, with LPA Member Plummer and Chair Cereceda dissenting.

Chair Cereceda provided a reminder that all items will be continued to May 12, 2026, and that all comments made today or previously will be part of the record. All remarks, as well as e-mail messages, are preserved.

VIII. ADMINISTRATIVE AGENDA

LPA Member Boan suggested that the continued items be heard after the regularly scheduled items. Chair Cereceda requested that Town Clerk Amy Baker highlight the proposed changes on pages 154 through 160 and on page 56.

IX. LPA MEMBERS ITEMS/REPORTS

No items.

X. LPA ATTORNEY ITEMS/REPORTS

Town Attorney Nancy Stuparich thanked the agency for their patience and noted that there was a lot of work done to ensure that the record was complete. LPA Member Dunlap expressed his appreciation for the Town Attorney.

XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS

Jason Green of Community Development reported that he and Senior Planner Jason Smalley have a request for a date change. He noted that both staff members would not be present on June 9, 2026. Chair Cereceda noted the possibility of rescheduling the meeting for June 16, 2026. She asked Town Attorney Stuparich, Town Clerk Baker, and the members of the Local Planning Agency for their availability. Jason Green suspected that the agenda would be longer than average. LPA Member Sudduth noted that he may be remote. Town Attorney Stuparich noted that she would be available. There were no objections to rescheduling to June 16, 2026.

Jason Green noted that staff will try to confine all proposed changes from the applicant to one location.

XII. ITEMS FOR NEXT MONTHS AGENDA

No items.

XIII. ADJOURNMENT

LPA Member Dunlap moved to adjourn the meeting. The meeting was adjourned, without objections, at 11:31 a.m.

DRAFT



Fort Myers Beach Local Planning Agency

Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931

Minutes

Tuesday, May 12, 2026

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members Present: Chair Anita Cereceda, and LPA Members Don Sudduth, Ed Schoonover, Doug Eckmann, Jim Dunlap, James Boan, and Jane Plummer.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

LPA Member Dunlap moved to approve the final agenda, seconded by LPA Member Boan. The motion carried unanimously.

V. APPROVAL OF MINUTES

A. Local Planning Agency - April 21, 2026

LPA Member Eckmann moved to approve the minutes of April 21, 2026, seconded by Chair Cereceda.

The motion carried unanimously.

VI. PUBLIC COMMENT

Robin Capela had provided copies of a document containing the responsibilities of the Local Planning Agency, to be distributed to the members of the body. She read this list and expressed her wish to remind everyone of these duties. She also had a question for Town Attorney Stuparich on legal liability when local governments overstep and approve variances or setbacks when there is a lack of hardship. She listed some cases as examples. She stated that the Town Attorney did not need to respond right away but that these were major concerns for her.

Dave O'Brian, Gulfside Twelve resident, asked the LPA to consider not passing the amendment, special exceptions, and variances. He believed that the Town should instead place a moratorium on large-scale development, with the Local Development Agency, after receiving feedback from residents, establishing the definition and parameters. He listed past proposals, how they were voted on at the

agency and Town Council level, and their overall resident feedback. He asserted that economics appear to play a role. He argued that it was too difficult to determine long-term outcomes when special requests are approved one at a time. He claimed that this awards developers who are good at marketing their proposals. No request is so unique that it cannot follow some guidelines for large-scale development. He offered that the comprehensive plan incorporate maximum restrictions on height, density, parking, and commercial space. Mr. O'Brian is against special development districts. It is of his belief that there are maximum values that an overwhelming majority of the agency, Town Council, and residents can agree with. He urged the Local Planning Agency to invest time and set up this process.

VII. PUBLIC HEARINGS

Town Attorney Stuparich provided an overview of the public hearings and a summary of the procedures for quasi-judicial proceedings. She confirmed with Town Clerk Baker that the agenda items have been noticed properly pursuant to Florida law and the town's Land Development Code. She asked if there were any disclosures of conflicts for any of the matters on the agenda. None were disclosed. Town Clerk Baker swore in all those who wished to testify.

Town Attorney Stuparich noted that she will ask for disclosures of ex parte communications for all items that are not legislative in nature.

A. VAR20260072 for 63 Delmar Ave

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING / APPROVING WITH CONDITIONS/ DENYING VARIANCE 20260072, REQUESTING A VARIANCE REPLACING IN ITS ENTIRETY A PREVIOUSLY APPROVED VARIANCE (20240267), TO VARY FROM THE REQUIRED STREET SETBACKS, AND SIDE SETBACKS FOR A SINGLE-FAMILY STRUCTURE IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 63 DELMAR AVE, GENERALLY REFERRED TO AS STRAP NUMBER: 19-46-24-W4-0100H.0010 IN FORT MYERS BEACH; AND 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 resolution. For ex parte communication disclosures, all members disclosed that they received an e-mail message from a neighbor. LPA Member Dunlap also noted that he had a conversation with Albert from Studio AD, who showed him the code requirements for this type of structure.

Jason Green from Community Development provided a summary of the request as outlined in the yellow sheet. He provided that staff has recommended approval of the variance.

Kara Stewart, on behalf of the owner and contractor, asked if Jason Green received the letter. He responded that he did not. She had not been given the

letter and would like to review it. Ms. Stewart provided that this was a 41-foot-wide piece of property, which limits the ability to construct a relatively suitable home. It is also located seaward, and the elevation is, at the lowest horizontal structural member, at approximately 20 feet. This elevates the house quite tremendously. She provided that an elevator is therefore needed at this point, noting the difficulty of access if one is not provided. During construction, the surveyor laid out the piles incorrectly, shifting the house forward about three feet. This was not discovered until much further along in the process. The contractor, after realizing the issue, contacted Ms. Stewart and told her that they would need to go back before the agency to seek approval for an additional variance. She summarized the details of the request, comparing with what was previously allowed. She highlighted that there may be an opportunity to correct certain construction errors administratively, but, unfortunately, this error (3-feet) exceeds the provided maximum (1-foot). She said that the site was very constricted.

Mr. Eckmann noted that the adjacent neighbor had some suggestions in the provided letter and would like to incorporate them into the agency's deliberations. LPA Member Plummer also would like this to be addressed, stating that this would be encroaching on the neighbor's privacy and space. LPA Member Boan referred to an allegation within the communication that there was no notice provided to the adjacent property owner for the now-approved variances. He stated that there is currently a different situation, as the house is mostly constructed, in contrast to the original application. Ms. Stewart stated that she will defer back to the town and said that it was her belief that the applicant was not responsible for these mailings. She noted that they had sent the notices during the second round and presumed that the Town Clerk had addressed them during the first hearing. LPA Member Schoonover expressed that he had similar concerns as LPA Member Boan and asked Ms. Stewart if she could address the conditions outlined in the neighbor's letter. He believed that they would not be difficult to accommodate. LPA Member Sudduth stated that one of the proposals was for a retaining wall. Depending on the height, there may be some setback issues. He suggested foliage or landscaping as a buffer.

No public comment.

Chair Cereceda confirmed with Ms. Stewart that she would need additional time to review the letter, which she was provided with earlier in the meeting. LPA Member Plummer moved to table consideration of this item, seconded by LPA Member Sudduth.

The motion carried unanimously.

The consideration of this item was resumed following the vote on the second public hearing. Ms. Stewart noted that, for the condition on removing the staircase and shifting it back to the original 4-foot approval, she had talked with the contractor, and they would be willing to make that accommodation. They are not in agreement with the recommendation for a wall for the entire side of the property to block the deck and the staircase. There was a suggestion to not further construct the deck in the rear, now that the property

has inadvertently been shifted forward by 3 feet. She explained that this property is cornered by the 1978 CCCL. The neighbor is requesting not to build beyond the original footprint and up to that line. The original request had allowed up to that 1978 CCCL. Ms. Stewart stated that they are willing to agree to not continue the side variance. However, if, in the future, the owner decides to extend the deck, they will meet side setbacks and will comply with the town's code. By a matter of right, they can then revise their permit to add a few feet to that structure. She noted the owner's intent to keep their rights to construct. She also brought up the second public hearing, where staff suggested creating an administrative route for situations like the staircase encroachment. The Chair confirmed that they are still willing to make adjustments to the staircase.

Chair Cereceda confirmed again that there was no public comment.

LPA Member Sudduth asked if the width of the staircase would still comply with code. Ms. Stewart said that this would be possible.

Chair Cereceda moved to approve the variance request 20260072, with the recommendations set forth in the staff report and the applicant's willingness to move or relocate the staircase in accordance to the neighbor's desire, seconded by LPA Member Plummer.

Mr. Eckmann asked if the staircase would be relocated or narrowed. Ms. Stewart clarified that it would be the latter and that they will be reducing the width.

Chair Cereceda modified her motion, which now reads, "to approve the variance request 20260072, with the recommendations set forth in the staff report and the applicant's willingness to narrow the staircase in accordance to the neighbor's desire. The seconder agreed to the modification.

The motion carried unanimously by roll call vote.

B. Ordinance 26-xx; FP & L Meter and Associated Structure Regulation Changes

Proposed Legislative Ordinance

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE III DIVISION 3 SECTION 34-638 OF THE LAND DEVELOPMENT CODE CREATING A NEW EXCEPTION TO MINIMUM SETBACK REQUIREMENTS REDUCING MINIMUM SETBACKS TO ACCOMMODATE NEW FLORIDA POWER AND LIGHT REQUIREMENTS FOR PLATFORMS TO LOCATE AND PROVIDE SERVICE TO ELEVATED ELECTRIC METERS; PROVIDING CRITERIA AND CONDITIONS FOR THE PERMITTED ELECTRIC METER EQUIPMENT AND ASSOCIATED PLATFORM, ACCESS STAIRWAYS AND RELATED STRUCTURES; PROVIDING FOR 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. Town Clerk Amy Baker noted that a number has not yet been assigned for this item.

Jason Green of Community Development provided a summary of the request as outlined in the yellow sheet. He highlighted that this text amendment is

meant to provide an administrative avenue and expedite the process. Currently, these requests would have to go through the public hearing process. LPA Member Dunlap asked Mr. Green if the raising of these meters would be a discretionary decision by the homeowner. The staff member responded that it would depend on the specific meter and believed that some are required by FPL. He noted that he will need to defer to the Building Department. It is of his belief that power sources and panels are supposed to be above base level. LPA Member Dunlap inquired about the height restrictions and commented about a potential loophole for property owners to create a larger deck. Mr. Green said that the designer of the home does have discretion regarding the location. This text amendment would create an administrative route. These kinds of loopholes would be flagged then. He mentioned that there were multiple factors that can differ by site. Staff will also encourage them to have the meters placed in an optimal location. Chair Cereceda asked if there were any individuals from FPL. There were none.

No public comment.

LPA Member Boan moved to move this ordinance forward to Town Council, seconded by LPA Member Dunlap.

The motion carried unanimously.

- C. Ordinance 26-04; CPA20240067, 6200 Estero Blvd., Outrigger Resort Mixed-Use; CPA-Text

COMPREHENSIVE PLAN TEXT AMENDMENT (LEGISLATIVE)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE TEXT IN THE FUTURE LAND USE ELEMENT, IN THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN-2045 ADOPTED DECEMBER 1, 2025, TO INCLUDE OUTRIGGER RESORT MIXED-USE LAND USE CATEGORY; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the ordinance. Mr. Green from Community Development noted that it was of his understanding that, around 3:47 p.m. on Friday, the town received amendments to the text amendment and revisions to the CPD component of the application. These were not included in the packet, due to timing. Staff has only had the chance to scan them for differences. He noted that he would distribute these at the earliest convenience. LPA Member Plummer asked why this was not sent out to members over the weekend. The Chair explained that these documents are not distributed until they are reviewed by the staff. LPA Member Plummer then inquired if these proposed changes need to be included for today's consideration. Mr. Green responded that it would be at the discretion of the body. Town Attorney Stuparich provided that, typically, staff would first review and provide their comment before sending these documents to the members. It would be comparable to something being brought forward during the

meeting. In this case, staff can review as the applicant explains their proposal. She stated that the agency can move forward with the changes and that these would be reflected in the published draft of the ordinance. She noted that it would be best that the public is also aware of these modifications. Chair Cereceda called upon Mr. Yovanovich, who stated that they would explain all the changes. There is an exhibit that can walk through every underlying change related to the reduction of FAR value from 3.0 to 2.75. He provided that they were told to provide a complete package that consolidated all previously provided information by 4:00 p.m. on Friday. The Chair asked who provided these instructions. Mr. Yovanovich answered that the Town Attorney and Mr. Green have given them this information. Chair Cereceda commented that, while she appreciated the applicant's willingness to walk them through every aspect, those who are attending or watching this session would not necessarily have the benefit. She stated that they had never not received a complete package before the meeting and expressed her concerns. Town Attorney Stuparich clarified that she did not provide that deadline but did note that she had said that it would be fine to submit on Friday. The agenda goes out on that day so that revisions can be made on Tuesday. Mr. Yovanovich agreed to this clarification but provided that they had been present at the LPA meeting until noon. Time was needed to obtain and compile the needed information. He asserted that, other than the reduction in the FAR value, no other amendment was new to the agency. Mr. Green expressed his disagreement with that statement, noting some changes to the policies. He mentioned that there may be some confusion due to the rushed timing. Town Attorney Stuparich stated that the applicant will walk through the changes but that the starting point should be the published agenda. She asked if the public would be able to review these modifications. Mr. Yovanovich stated that they will present all changes. Mr. Boan asked if the agency could move forward without the changes, which could then be presented and addressed by Town Council. Town Attorney Stuparich stated that this would be possible. She also noted that this item is legislative in nature and would not need to comply with the requirements for a quasi-judicial proceeding. Ms. Plummer inquired if the document of changes would be available to the members now, or if they will only see the slides at this point. The Chair provided that there is currently only the presentation. Mr. Yovanovich provided the background and overview of the requested presentation. Town Attorney Stuparich explained that labelled paper copies are being provided with today's date, to prevent any confusion. There may still be a need for clarification on which documents the applicants would like to be reviewed. The first by right option would be to essentially rebuild the hotel at the raised elevation based on the town's flood code, which would make the building three floors above one level of parking. The most efficient shape would be the horseshoe. He stated that this option is uneconomical and the least desired of the two by right options. This proposal would replace the 144 rooms, the restaurant, and necessary parking. He then presented the option under the Florida Live Local Act. He explained this statute's

requirements and the definition of workforce. He noted that the applicant provided a conservative approach, applying the act to 3.5 acres rather than the entire 9 acres. The Live Local Act would allow the developer to build based on the highest town-permitted density and at the highest building height within one mile. LPA Member Plummer asked about the height of the buildings depicted in the presentation slide. Mr. Yovanovich responded that the structures were 158 feet. LPA Member Dunlap confirmed that the illustration showed the buildings at the same height. Mr. Yovanovich presented that the market rate units would be in a building in front of the structure for workforce units. This would be in compliance with the statute. He continued by describing what would be allowed and done under this option, noting that it would bypass approval from the town and go through the administrative process. He noted that the applicant would be allowed a FAR value of up to 3.75. Mr. Yovanovich said that this was a potential back-up plan if they were denied, but expressed the applicant's preference for their proposed plan. Chair Cereceda asked why the San Caper Beach Club was included in the FAR value, noting that this was not approved by the town. Mr. Yovanovich noted that the statute did not require town approval, only permittance. Town Attorney Nancy Stuparich stated that she believed this was the case, but is not certain. LPA Member Sudduth asked if this would be based on what the town has permitted historically, and Mr. Yovanovich responded affirmatively. The LPA member asked if this could be verified. The applicant's attorney continued by presenting the key changes since April 14, 2026. He reported on the outline of the proposal, with the recommended modifications incorporated. He displayed the changes in the language on permitted uses, height and stories, intensity, and density. There were discussions and requests for clarity on the new and originally proposed heights. Chair Cereceda commented that the conversion was implemented despite no existing residential units. Mr. Yovanovich recalled that, at the meeting on April 14, 2026, the applicant had asked if they could convert using a 3:1 ratio due to the loss of four residential units. It was his understanding that this was allowed by the agency. The Chair expressed her caution with applying the conversion factor to units that do not currently exist. LPA Member Dunlap added that this was under the context of a negotiation on the reduced height. LPA Member Sudduth, noting an inconsistency in the number of stories, asked if the proposed number would be 14 or 15. Mr. Yovanovich stated that he would provide this later in the presentation. Ms.

Plummer confirmed with the Chair and Mr. Green that this conversion factor is provided, though not guaranteed, in the Land Development Code. The staff member explained that this has always been based on existing density. LPA Member Boan remarked that he did not see the benefit in the redistribution of floors.

He believed that this would not be noticeable from an aesthetics perspective. Mr. Yovanovich presented on the FAR value, noting the applicant's disagreement with the town's reading of the future land use element.

The agency recessed for five minutes.

Following the break, Town Attorney Stuparich noted that she had discussions with the Town Planner and the applicant's attorney. At the appropriate time, during LPA discussion, they will identify within the agenda packet the location of the actual language. If the agency agrees to the changes, those will be displayed on the screen. Mr. Yovanovich showed the master plan. The Town Attorney suggested to the members that they mark this as "Exhibit A," which is a revised site plan or revised master concept plan to the PD. LPA Member Dunlap confirmed with the applicant's attorney that this is based on the applicant's understanding of the discussions on April 14, 2026. Mr. Green highlighted that this exhibit pertains to the CPD, which is the next item, and not the proposed current text amendment. LPA Member Boan noted that LPA Member Sudduth had offered a suggestion, not a request. Mr. Yovanovich continued describing aspects of the master plan and proposal. Mr. Wilson recounted the discussions on April 14, 2026, and announced that they were able to come up with a way to only reduce by one story. He summarized the changes and presented illustrations depicting what the current proposal would look like, if implemented. LPA Member Dunlap clarified that the FAR value was changed due to a refinement in the calculation and was not related to the height and story reduction. LPA Member Boan asked for the square footage that was removed and added. The applicant noted that it was not a direct trade and stated that it was his understanding that there were no concerns about the increased area from this tradeoff. He reported on the overall statistics on floor area and presented the new renderings of the structures. Mr. Yovanovich further explained the Neptune FAR Deviation, which he believed would be informative on what the town has historically used in calculating that value.

Public comment:

Ellie Bunting stated that the vibrancy of their island has its roots in a healthy balance between residential and tourism. She asserted that Council has emphasized that developers will help bring the town back, which she believed is not the case. She argued that the excessive development rights will add hardships to the island and provide further strain on water supply, electricity, travel time, road maintenance, and traffic. There would also be affordability concerns for residents. She believes that the residents, homeowners, labor workers, small businesses, shops, restaurants, community organizations, and community leaders are the ones who will restore the town and create that ideal balance between residential and tourism. She noted that approval by the Local Planning Agency would create a precedent that will cause excessive costs and a burden to the residents' quality of life.

Beth Burwinkel, a resident of over 35 years who currently lives in Gulfside Twelve, voiced her opposition to both the original and new plan. She thinks that the profit margin should not be a reason for the many requested variances. She reminded the agency that they must decide on whether this proposal fits into the comprehensive plan and whether there has been an exceptional and unique hardship that is not self-created. She pointed out that the applicant is asking for an Outrigger district. She commented that this was selfish and egregious. She presumed that London Bay needed this development to ferry over individuals living on Estero. She claimed that the

residents did not need these proposed structures.

Bill Burwinkel thanked the members for their service. He referred to earlier remarks by Ms. Capela on the role of the agency and went through the various duties. He provided copies of a survey for Fort Myers Beach to Town Clerk Baker to distribute. He presented that 75% of those surveyed wanted to constrain the height and density of developments and to refrain from amending the comprehensive plan. He commended the agency on their decisions on the Seagate proposal and claimed that the deviations approved by Town Council resulted in the current outcome. He requested that the body deliver on their responsibilities and deny the application.

David Nusbaum stated that he is still in favor of the Outrigger development. He expressed his firm commitment and emphasized that residents cannot wait any longer. He acknowledged that there were disputes about specific details of the proposals but noted that this proposal would ultimately follow the comprehensive plan. He stressed that requests are constantly brought up that require deviation or adjustment. Mr. Nusbaum pointed to what may occur if the developer chooses to go through the administrative process with the state, listing what would be lost if that happens. He asked the agency to stick with the plan and allow the adjustments.

Marsha O'Brian, a Gulfside Twelve resident, believes that the standards for approval of variances should be consistently applied. She referred to the past approval of Estero Island Beach Club. She described the amount of redesign that occurred in order for Town Council to ultimately allow the project. She questioned why this should be any different for this proposed development.

She expressed her opinions that the project should be denied and that London Bay should come back with a redesign. The LPA should not be concerned with the return on investment of the company. She urged the body vote "no" and recommend denial to the Town Council.

Tod Capela, full-time resident, recounted a previous public hearing item and contrasted it with this development. He cannot fathom how the agency could allow this to move forward, stating that this would forever change the nature of the island. He cited his wife's past remarks and said that it was the agency's duty to prevent this development from happening.

Ellen Vaughn expressed her appreciation to the LPA members for their service. She implored the company recognize the spirit of the community and work with them to present something that would be acceptable to them.

Nancy Walker, also a full-time resident, reiterated that one of the visions of the comprehensive plan is to limit high-rise development. She believes that this proposal goes against this goal.

Tom Brady, president of Protect FMB and full-time resident, recalled that the town motto used to be, "Keep it funky." He loved that aspect and noted that there was nothing in this current proposal that supports that vision. He argued that a majority was against the development. It was also his belief that those who will be impacted should have their remarks weighed more heavily than statements of those who will not be living near the property in question. He voiced his opposition for the tiki bar, saying that it would be a

new structure. He asserted that there would be the risk of litigation. He liked the Live Local Act option and pointed out that this was a recommendation from one of the LPA members. He is in support of workforce housing but expressed his caution about that option. Mr. Brady further pointed to the credibility of the developer, disputing the facts they presented. He asked if he could yield himself more time. His request was denied.

Walter Pilkins, a Fort Myers Beach resident, stated that he thinks that a slide was missing from the applicant's presentation. He wished to see how the applicant came up with the FAR value of 1.5. He requested that the members ask for this information.

Robin Capela believed that the Live Local Act option was a scare tactic. She challenged what the applicant presented on restrictions.

Donna Vichelli voiced her opposition to the project. She was against the location of the pool. She believed that London Bay is trying to import a luxury lifestyle. She argued that the individuals brought in by this development would not use the town's other facilities or support local businesses. She presumed that, if this is approved, the company will come back with major variances for another property they own. She disputed this area's description as a high-rise district. She also warned that Margaritaville will then approach the town with its own request for a tower. She concluded with a request to LPA and Town Council to consider and develop a procedure to allow residents to vote on developments that exceed a certain amount of deviation. She believes that, in those cases, it is too risky to put the future of the island in the hands of three Council members.

Lori Webster was overwhelmed with the information presented in this meeting that was not available in advance. She believes that there has been a major lack of respect for the rules. She expressed her concerns about the future of this island. She voiced her opposition to the project.

Dave O'Brian pointed to how the residents have felt about this development. He asked the LPA, if they choose to vote "yes" on this issue, that they also provide an explanation of their decision. He voiced his concerns about the reduction of his property values. It is of his belief that he should get an assessment of the value before and after this development.

Public comment closed.

Town Attorney Stuparich stated that she and Mr. Green had an opportunity to speak. They wished to note that they have not had the opportunity to analyze the representations on the Live Local Act. Mr. Yovanovich said that there were around 70 letters of support. He promised Mr. Brady that the company had known about the statute since it was approved. He voiced their wishes against being portrayed as using scare or threatening tactics. He predicts that there will be litigation over the Live Local Act's interpretation. It is of the applicant's belief that a purely residential development would not be a positive contribution and that their current proposal will add public benefit to the town. Mr. Wilson addressed a mistake that he had made and said that an apology letter was sent to the agency, the Town Council, the Town Manager, and the Deputy Town Manager. He is also willing to submit this item to the

record, though he believed it was already provided. He explained that this was how his company dealt with integrity. The applicant challenged the presumed motives that were voiced. He gave an overview of what he and his team have done so far. He expressed his opinion that the Live Local Act option is not the best outcome for the property. He also addressed the claims that the meetings were not inclusive enough. He asserted that the list of the various community events is extensive. He believes that they have never turned anyone away when there is a request for discussion. He wanted to shift the focus of the discussion to how the south end of the island could restore its past lifestyle. He asserted that, if this project is not approved, it will cause a detriment to the lifestyle and economics of the island. He reiterated the fact that there were 70 letters of support. He read excerpts of the communications which he noted were previously provided.

Chair Cerceda asked Alexis if she could provide a clean version of the proposed text amendment. The language in the agenda packet is not what is currently proposed. Town Attorney Stuparich referred members to page 82. She confirmed with Jason Green and Mr. Yovanovich that this was correct. Jason Green noted that he is going to distribute the components submitted on Friday, which were not reviewed. He referred members to the third page for edits. Following LPA Member Dunlap's request for clarification, he indicated that the applicant had submitted two times, once on April 30, 2026, and again on May 8, 2026. He noted that there were some differences. Mr. Yovanovich confirmed that the past public comment will be incorporated. The document was displayed on the screen for the audience.

Jason Green provided general statistics for the Outrigger, as it had been originally built, as well as the values that the applicant is currently using. There were questions about parking spaces and their size and relevance to the FAR value. The staff member explained how enclosed spaces generally contribute to the number and walked the agency members through the calculation for the approximate size of the parking areas. Mr. Yovanovich reviewed the changes, which he noted were presented to public on April 29, 2026. The changes were also displayed on the screen. Jason Green, describing the changes in the density portion, mentioned his preference from the first meeting for providing a specific number of units, rather than an amount per acre, as a way to prevent confusion.

LPA Member Dunlap emphasized to the developer the importance of providing alternative plans, citing this previous request for legitimate options in case their requested proposal is not approved. LPA Member Sudduth remarked that the predominant issue is height. He remarked that the community needs a catalyst and that the current real estate market is fairly stagnant. He recognized that he, as a member of the Local Planning Agency, must represent the people. He noted that a significant number of individuals are opposed to this project. He acknowledged London Bay as a solid investor in the island. He mentioned that alternatives were presented and that they will need to consider whether those are viable or not. Mr. Eckmann voiced his preference for the original design. He understands that there was a compromise. He remarked that development will inevitably

occur and that the developer is attempting to work with individuals. He said that this appeared to be a quality project. LPA Member Plummer recounted the town's recall and how it revolved around the Seagate proposal. She expressed her discomfort with the height, noting that this community did not want to become like the city of Miami. She was firm on the 2.5 FAR value. She stressed the difference in size between the original Outrigger property and the proposed plan. LPA Member Boan stated that granting this request would set a precedent that the comprehensive plan does not need to be followed. He provided that this document does not allow code requirements to be labeled as public benefits. It is of his belief that the remaining benefits resemble amenities. He asserted that the scale of this development is too intense for its location. He explained his reasoning by computing the dwelling units per acre. He said that this value would be comparable to those of Miami or St. Petersburg. He pointed to the fact that this development would not be completed until sometime in the far future, at least 2030 or 2031, and identified the 50% pre-sales contingency. He commented on the higher FAR value and argued that the workforce housing aspect is unrealistic and economically infeasible. He recognized the company as a competent quality developer with a great track record but voiced opposition to the project. Mr. Schoonover noted the difficulty in deciding on this issue. He would prefer consideration of the original proposal first, before moving to the second one. He believed that London Bay may need to sharpen their pencils a bit more, when this goes before the Town Council. Chair Cereceda referred to Steve Johnson's comparison of the comprehensive plan to a covenant, expressing her agreement to this concept. She is astonished by this proposal, especially given the company's past record. She emphasized that the agency members are not able to visualize this development, pointing to the lack of three-dimensional modeling and overall detail in the presentation. She believed that this aspect may have made the difference in the ultimate outcome. She noted that she is firm on her stance of 2.5 as the maximum FAR value. She had hoped that the applicant had addressed this in their presentation. She remarked that the Live Local Act is an option but said that this decision is for the applicant. She said that the change in numbers were not impactful enough for her to change her opinion. She also expressed her disagreement to the treatment of the equivalency factor. She would have liked that the applicant presented on the context of the comprehensive plan. Mr. Sudduth asked if she would have changed her mind if the FAR value is reduced to 2.5. She noted this possibility, stating that the height issue is less of a concern for her. LPA Member Sudduth expressed his agreement that the conversation may be different and emphasized that developer negotiation agreements are meant to be negotiated. He predicted that more larger developments will come up that will have a FAR value higher than 3.0 that the town may eventually approve. He wants to see more discussions. He commented on Neptune and expressed his opinion that every proposal must stand on its own and not rely on other accepted plans as precedents. LPA Member Dunlap expressed his preference for the original plan. He pointed to an instance where London Bay addressed a concern from a local resident

on view corridors. Chair Cereceda asked if he would prefer the original height. He responded affirmatively. LPA Member Dunlap remarked that the community misses the old quality of life in the area. He added that this proposal will inevitably happen, though he noted this would be around 5 years from now. He addressed the letters of support and indicated the extensive rationale for support provided in these communications. The Chair stressed the negative impacts for the community. She is focused on the next generation of island residents and how this plan would affect them. She is not as concerned about the short-term benefits.

Town Attorney Stuparich explained that this amendment would add "Section F." She noted the two versions. LPA Member Eckmann asked if there could be a modification for a FAR value of 2.5. Chair Cereceda provided that this would be unlikely, unless the applicant is able to present and address this reduction. She asked for input from other agency members. LPA Member Plummer stated that the number would be within the range. Mr. Schoonover brought up the disputes on calculation of the FAR value.

Chair Cereceda moved to deny the request of Ordinance 26-04; CPA20240067, for 6200 Estero Boulevard, Comprehensive Plan Text Amendment, seconded by LPA Member Boan. The mover also confirmed with the Town Attorney that she was using the version that was received at this hearing on May 12, 2026.

The motion carried 5-2, with LPA Member Schoonover and LPA Member Dunlap dissenting. Mr. Eckmann explained his "yes" vote by commenting that there were too many questions in front of the agency.

Town Attorney Stuparich asked if there was an alternative motion. The Chair asked the members. There was no motion made. LPA Member Dunlap inquired about how this would affect the succeeding items. Chair Cereceda noted that the agency can discuss and put in limitations, but that this would depend on the applicant's wishes. Mr. Yovanovich noted that they are not withdrawing their requests. He made a clarification of what he had heard: that the number from FEMA was 175 and not 195. He noted that the agency could propose an alternative motion but wished that all members understand.

The agency recessed for 30 minutes.

Following the break, Town Attorney Stuparich explained the different versions of the proposal and what had occurred shortly before the recess. She provided that the applicant or one of the members of the LPA may wish to consider the proposal in today's agenda packet as an alternative motion. Mr. Yovanovich stressed again that the number was 175. The applicant is also willing to submit a modified FAR value of 2.5. LPA Member Sudduth confirmed with Mr. Wilson that this building would be 190 feet tall. The applicant's attorney added that while there is no change in the height, there would be a reduction to the square footage. The Chair verified with the Town Attorney that this would be an entirely new motion, as the body cannot address the same motion that had been before it. She also asked the applicant why they did not propose a FAR value of 2.5 in the first place. Mr. Wilson responded that there would need to be a lot of adjustment to get to

this number. He is unsure of the exact way they would reach this amount but noted that they are willing to do so. Chair Cereceda expressed her concern about not being able to visualize this proposal and recommended that the applicant provide the full picture when they come before the Town Council. Mr. Eckmann suggested that the restriction only refer to the number of stories above parking. LPA Member Plummer stated that the height is important, as ceilings can be higher or lower. Mr. Yovanovich confirmed Mr. Eckmann's intent of not limiting the developer on those ceiling heights. There was further discussion on negotiations and if the height restriction would allow for the structures to be built all at the same maximum amount. Mr. Yovanovich pointed out that the item after the map change would allow the agency to prevent this uniformity. Mr. Wilson referred to past approvals that have not shown signs of development. He expressed their desire to compromise and listen. He noted the potential difficulties if the agency refuses to approve after negotiations. LPA Member Plummer commented that a FAR value of 2.5 would be a stronger direction for her. She acknowledged the change in height but still expressed her concern. Chair Cereceda would like to see a revised plan and hopes that this is presented to the Town Council. LPA Member Sudduth recounted the past consideration on these restrictions. The Local Planning Agency members discussed about the height limitations and its ultimate impact. Mr. Yovanovich stated that they have provided what they are able to work with. LPA Member Dunlap noted that they have the opportunity to provide suggestions for the revised proposal. He would like to have these discussions with the applicant. The Chair noted that the applicant had provided their numbers. LPA Member Dunlap questioned about what should happen if members are agreeing to the values that were presented by the developer. Mr. Wilson recalled about the reduction of height at the first meeting and the continuances. He provided that the team had provided the agency with what they had requested. He believed that there should be an understanding of the plan with the reduction in square footage. He emphasized that this would be a relatively small adjustment. LPA Member Plummer remarked that there should have been additional talks at the first meeting on the other portions, as the meeting mainly revolved around the height restriction. LPA Member Schoonover asked if there were additional by right options not presented. Mr. Yovanovich noted that there were essentially infinite alternatives under the Live Local Act. The applicant does not wish to bypass the town and the public. He indicated that they are responding to the requests by the agency. He argued that the picture was there and that the adjustments are minor. Chair Cereceda noted that the height issue has not been resolved. LPA Member Schoonover believes that it is the agency's responsibility to provide guidance to the applicant on how to move forward with Council. Addressing the claims that workforce housing was a red herring, Mr. Wilson stated that this would be their only other choice. He pointed to the time and effort made into this plan. He mentioned the by right options. Mr. Dunlap offered the possibility of redistributing the FAR which would bring down the height of that structure. All other buildings will become

taller. The Chair asked Mr. Green if an amendment to the comprehensive plan is still needed when the FAR value is 2.5. The staff member explained that this maximum only applies to the commercial future land use category. All other types will require 1.5. Thus, this amendment would still be needed. LPA Member Plummer said that she could not imagine workforce housing as a possibility, given the developer's vision. Mr. Wilson referred to the mixed use projects in Miami, Tampa, Sarasota, Jacksonville, and Fort Lauderdale. He explained how there would still be demand for units that are not at market rate. He also pointed to the higher density that would be allowed. It is of his opinion that the community would not like this option.

Confirming that this proposal contained a maximum height of 175 feet (midpoint of the roof) and a restriction of 15 stories inclusive of parking over the two floors, with a FAR not to exceed 2.5.

LPA Member Eckmann moved to approve the comprehensive plan amendment, seconded by LPA Member Schoonover. Town Attorney Stuparich had added that there will be recognition that there is essentially no change in the density in regards to the provision on 150 hotel and 46 multi-family units. There would not be a conversion factor.

The motion failed 4-3, with LPA Members Eckmann, Schoonover, and Dunlap voting in favor.

- D. Ordinance 26-03; CA20240067, 6200 Estero Blvd., outrigger Resort Mixed-Use: CPA-Map

FUTURE LAND USE MAP AMENDMENT (LEGISLATIVE)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH FUTURE LAND USE MAP-2045, ADOPTED DECEMBER 1, 2025, FOR THE PORTION OF PROPERTY LOCATED AT 6200 ESTERO BLVD, IDENTIFIED AS STRAP # 33-46-24-W3-00012.0000 THAT IS LANDWARD OF THE 1978 COASTAL CONSTRUCTION CONTROL LINE, IN FORT MYERS BEACH; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the ordinance and indicated that this item was legislative in nature. Mr. Green provided a summary of the request as provided in the yellow sheet. He addressed the impacts from the previous item. The Chair asked if the agency is procedurally required to go through all the remaining items. Town Attorney Stuparich replied that they would, unless the applicant wished to withdraw. Mr. Yovanovich noted that the applicant does not wish to do so. Mr. Green concluded with staff's recommendation to deny this request, in the interest of being consistent with state law.

No public comment.

LPA Member Boan moved to deny Ordinance 26-03; CA20240067, 6200 Estero

Blvd., Outrigger Resort Mixed-Use: CPA-Map, with the reason of inconsistency, based upon the testimony from the Town Planner, seconded by LPA Member Plummer. LPA Member Boan requested that the comments he had made on the previous ordinance be added into the record. The seconder of the motion agreed to these changes.

The motion carried unanimously by roll call vote. LPA Member Eckmann stated that he voted "aye" because the category does not exist.

- E. Ordinance 26-05; CPD20240061, 6200 Estero Blvd., Outrigger Resort Mixed-Use

REZONING REQUEST (QUASI-JUDICIAL)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING A REZONING OF PROPERTY LOCATED AT 6200 ESTERO BLVD, FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBER 33-46-24-W3-00012.0000 FROM A PREVIOUSLY APPROVED COMMERCIAL PLANNED DEVELOPMENT (OUTRIGGER BEACH RESORT) TO A COMMERCIAL PLANNED DEVELOPMENT WITH 12 DEVIATIONS TO ALLOW FOR A 46 DWELLING UNITS; 150 HOTEL ROOM AND 46000 SQUARE FEET OF COMMERCIAL USE AND 340 PARKING SPACES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the ordinance and indicated that this item was quasi-judicial in nature. For ex parte communications, LPA Member Dunlap provided that he had attended two sessions, one of the original proposal (now withdrawn) and one of the subsequent proposal. He went through both presentations in some level of detail in that regard. He also attended a community meeting on the south end of the island and talked with some residents on their reactions. LPA Member Dunlap received several communications in the meantime. In particular, he had gotten texts and e-mails from Mr. Wilson. LPA Member Dunlap noted that he had mentioned the alternatives and will be asking about this aspect. He watched the Beach Talk Radio conversation and the LPA session. He provided his feedback to Mr. Wilson. He also met with Mr. Torgorsen, who expressed his concerns face-to-face. He suggested that the two meet on their own and provided the contact information to Mr. Wilson. He attended the Beach Talk Radio session on Saturday, which was heavily involved with the reaction from that group. He spoke with Cameron Post, who conducted the survey. The conversation lasted about one and a half hours.

He provided that the discussion was stimulating, professional, and productive. While there was disagreement on some of the components of the survey, LPA Member Dunlap was confident that it was statistically accurate. He noted Mr. Post's desires to help mediate between the two parties. He stated that

this may be something possible in the future. He also mentioned that he tried to be responsive to anyone who had reached out to him with a question. LPA Member Sudduth provided that there were two meetings on Zoom and one in-person with Mark Wilson and his team, since last fall. He has conversed with Mr. Wilson and many individuals of the town, friends, family, and interested parties. LPA Member Eckmann interacted with Mr. Wilson and a member of his team at an interim town hall, where this project was presented. He met Mr. Wilson at London Bay's sales office in Estero. He received a communication from Mr. Wilson of some corrections to statements the latter made during the April Meeting. He also told him that he would be available on May 8, 2026, through a phone conversation. Chair Cereceda confirmed with the Town Attorney that past ex parte disclosures were already on the record. LPA Member Plummer had discussed with many individuals associated with the Mound House, who expressed their opinions. She also received more e-mails. LPA Member Boan provided that he declined Mr. Wilson's office's invitation to meet and review changes.

He received e-mail communications and comments from residents, families, friends, and neighbors. LPA Member Schoonover received additional e-mail messages. He spoke with some additional individuals in the town, with some for and some against the project. The Chair received some additional e-mails and noted she read some social media posts. She spoke with Mr. O'Brian about the Gulfside Twelve and the beach access. He reminded her that this was part of the property's application and approval. Town Attorney Stuparich, acknowledging the large amount of disclosures at this hearing, reminded members that they are impartial decision-makers. She asked each member if they are willing to listen to the testimony and the evidence that is presented to them today and render their decision based on that, and only on that. All members responded affirmatively. The Town Attorney provided the applicant's attorney an opportunity to ask additional questions on the disclosures. Mr. Yovanovich declined. He also noted that there was nothing further to present. Mr. Green referred to the edits made by the applicants. He explained the contents of the CPD application. Staff had provided some recommendations of conditions, and the applicant had also given the conditions they were willing to accept. The staff, however, is recommending a denial of the CPD due to the inconsistency with the comprehensive plan.

Public comment:

Tom Brady stated that costs for designs have gone down. He showed his own rendering of the London Bay development. He noted he will send to Mr. Green and others. This depiction used every square feet. He noted the kinds of output that can be produced with artificial intelligence. He did recognize that there would be costs for attorneys, planners, and other staff. He asked the agency to not consider the company's investment. He asserted that London Bay has not shown their personal net worth to prove that they cannot afford to undertake certain actions. He recognized how difficult it can be for members of the public to attend and speak for these public comment sessions. He appreciated each individual for doing so. He requested from the Town Clerk the percentage of those against the project. He mentioned the

three-minute debate limitation and case law going both way on these restrictions. He called the developers bluff on the Live Local Act option. He emphasized the need for more information. He also mentioned that the public did not receive an apology with corrections.

Public comment closed.

Town Attorney Nancy Stuparich reminded the members to be specific on the reasoning behind denial or approval. Mr. Green confirmed with her that the agency should use the same version as considered with the comprehensive plan. Mr. Yovanovich stated they have withdrawn all previous modifications and asked them to vote on what was presented in the first packet. Mr. Boan commented that there was a large reduction in parking and that there was no guaranteed parking for users of the linear park or guests of the tiki bar. He also remarked that, in planning circles, properties with less than five acres and not adjacent to similarly zoned contiguous properties are considered as spot zoning. This can be viewed as arbitrary and incompatible with the community. The property and all adjacent properties are zoned as residential potential, not mixed use. The Chair asked for comments from the Town Attorney, who noted that it was unlikely to be called spot zoning if the amendment had passed. She also pointed to the inconsistency with the plan as a concern.

LPA Member Boan moved to deny Ordinance 26-05; CPD20240061, 6200 Estero Blvd., Outrigger Resort Mixed-Use, based on the inconsistency with the comprehensive plan and the points he made during the comment portion, seconded by LPA Member Plummer.

The motion carried 6-1, with LPA Member Schoonover dissenting.

- F. SEZ20240112, 6200 Estero Blvd., Outrigger Resort Mixed-Use: Special Exception

SPECIAL EXCEPTION - CONSTRUCTION IN EC (QUASI-JUDICIAL)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240112 TO ALLOW RECONSTRUCTION OF A MAJOR ACCESSORY STRUCTURE IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 6200 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the resolution. LPA Members Schoonover, Dunlap, Eckmann, Boan, Sudduth, and Plummer provided that they had the same disclosures as previously made. Chair Cereceda added that she had conversations with several individuals on the location of the tiki bar and their desires for it to be moved to a more central location, due to the

impact on nearby properties. Otherwise, her disclosures remained the same. Town Attorney asked if all members would remain impartial. There were no denials to this statement. The applicant's attorney did not have questions on the disclosures for ex parte communications. Mr. Green of Community Development provided a brief summary.

Alexis Crespo of RVI Planning+ Landscape & Architecture mentioned the by right options based upon the previous zoning approval. Chair Cereceda asked if the Charley's Boat House parcel was included in the original CPD. The presenter responded that it was not. She reported on the SEZ-VAR Boundary and the historical use of the Outrigger property. She displayed a map showing the location of the previous tiki bar and recreational building, noting the applicant's wish to move the bar to that latter place. She stated that the developer would need to meet with the standards of FDEP. The Chair requested for the square footage. The southernmost pre-existing building was 805 square feet, and the historical bar, seaward, was about 150 square feet. This would mean that there would be approximately 955 square feet to beach impacts seaward of the CCCL. She provided that the applicants are asking for 800 square feet, which would be a reduction to what was originally there. In response to Ms. Plummer's question, Ms. Crespo identified a 15-foot setback and said that the applicant is requesting a 10-foot setback. She showed a copy of the alcohol license. She also presented overviews on the SEZ and VAR, COP in the EC Zoning District, and the special exception criteria. Chair Cereceda noted that they would only be considering the construction for this item. Mr. Green added that the staff report combined the two components and that they have identified Section 34-88 of the LDC. This has been provided to members and the public on page 200. He reported that the agency is considering the construction and use in the EC zone, not on its location. He highlighted the differences between variance and use, noting that these were separate requests. He presented that staff recommends against this item as this would be contingent on the CPD approval. LPA Member Plummer asked if FEMA would approve this structure. The staff member noted that this issue has not yet been reviewed. LPA Member Boan noted that staff is recommending denial because the comprehensive plan amendment was not approved. He inquired, had there been a different outcome, if staff would have recommended to support this item. Mr. Green highlighted that this would be a new use in this zoning district and believed that the staff would still recommend against this special exception request, as the comprehensive plan limits the use in this zone.

Public comment:

Dave O'Brian stated that these three items were connected. This issue is the main concern for the neighbors. He believes that there are other alternatives available, arguing that service would be easier if the location of the bar was centralized. He recounted a public meeting where he spoke with Mr. Wilson and the team on his opposition to the project. He had said that their development would impact Gulfside Twelve the most. He also communicated his opinions during the first LPA meeting. Mr. O'Brian had not received a

response or accommodations to his requests.

Steve Johnson, who was not present for the previous portion of the meeting, was sworn in. He voiced his strong opposition to construction in the environmentally critical zone. He acknowledged the desire to be next to the water but stated that the town cannot allow this encroachment. He emphasized the importance of protecting the beach, which is an asset for the island. He asserted that grandfathering benefits disappear when the building no longer exists. Mr. Johnson reminded the LPA of their responsibilities and the purpose of this zone. He provided that the line has already been drawn with the CCCL.

Marsha O'Brian echoed Mr. O'Brian's remarks. She noted the significant loss of privacy. She stated that there are a lot of grandchildren in Gulfside Twelve and that they should not be subject to alcohol service or adult language. She asserted that the fence should also be in a more central location.

Kathleen Borman, a resident of the south end of the island who lives within walking distance of the project, recognized the benefits of the historical tiki bar. However, she expressed concern about how this proposed structure is being associated with the one that no longer exists. She argued that this is being used to entice the community. She stated that Santini would be developed by the time this project is completed. Her main concern is the scale in the environmentally critical zone. She recognized London Bay for the quality development but is not sure if this project would be in the best interests of the community.

David Nusbaum noted the need for the return of the lifestyle of this area. He recounted his conversation with Mr. Wilson, who had informed him that relocating would prevent them from service in the other location. He noted that there may be losses to the benefits if this bar is moved. He wishes to respect the wishes of his neighbors. He offered some ways to buffer the sound from the bar. He believed that something needs to be done regarding this issue.

Kathy Schultz was sworn in, as she was not present for that earlier portion of the meeting. She asserted that this structure should be rebuilt landward of the CCCL. She noted that many properties have rebuilt exactly what had existed before Hurricane Ian. She said that this project, however, would mean an approval for something new and more intense than what had been there historically. She hopes that the LPA and London Bay recognize that this request is a disservice to the community.

Public comment closed.

Mr. Wilson referred to the community's request for the tiki bar. He recognized his conversations with Mr. Nusbaum. He asserted that London Bay did not ignore the requests from him and other residents. He stated that he would have loved to relocate the bar but noted the limitations at the state level.

Elizabeth Fountain from J.R. Evans Engineering presented their discussions with DEP state representatives, who had let them know that structure is allowed as long as the developer kept the same impacted footprint and did not expand on any type of foundation. She stated that they will need to go

through the permitting process with the state. Chair Cereceda confirmed with Ms. Fountain that the choice of location was based upon the fact that the recreational building had a larger square footage than the tiki bar. She further asked if there had been any discussions with the state representatives on redistributing the square footage from the recreational building to the tiki bar, if they chose that location. Ms. Fountain stated that they did not. There were discussions on how large the structure would be to encroach on the CCCL and the effects of variance denial. Mr. Green stressed that any development landward of the line would be consistent with the code. The limitation is triggered by the EC zone. He also wished to confirm with Town Attorney Stuparich that this structure is in theory for alcohol consumption, which is a separate request. Any approval would be contingent upon and subject to the decision on consumption on premise. He highlighted that they were currently approving on the use. The Town Attorney also brought up the consistency issue. Mr. Green stated that any approvals would have to go through the findings of the criteria and the comprehensive plan. Mr. Yovanovich highlighted that there is an existing CPD, which is a by right option. Mr. Green expressed his disagreement, noting the purpose of the special exception. The applicant's attorney asserted that the last rezoning has been done by Lee County and stated that it was of his opinion that they have a CPD on the entire nine acres. Mr. Green presented that it was staff's recommendation that the LDC and zoning map go with this development. There was additional debate on whether the town had acted after this CPD. Mr. Eckmann moved to deny special exception SEZ20240112 to allow major reconstruction of a major accessory structure, providing that staff had listed a number of reasons on why it would not be compliant, that he is personally not in favor of development in the environmentally critical zone, and that this property would not be the best way to restore this community-desired amenity, seconded by Mr. Schoonover. The motion carried unanimously by roll call vote.

G. SEZ20240112, 6200 Estero Boulevard, COP
SPECIAL EXCEPTION - COP (QUASI-JUDICIAL)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240112 TO ALLOW EXPANSION OF CONSUMPTION ON PREMISES IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT AS PER LDC SECTION 34-1264. (G)(1). FOR PROPERTY LOCATED AT 6200 ESTERO BOULEVARD; PROVIDING SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the resolution and asked for any additional

disclosures for ex parte communication. None were disclosed. The Town Attorney asked if all members still kept an open mind on the issue at hand. There was general agreement from the members. Jason Green of Community Development presented a summary of the request as outlined in the yellow sheet. He reported staff's recommendation for denial of the request at this size. The agency confirmed that this COP proposal would apply to areas other than the tiki bar. LPA Member Dunlap asked about the potential impacts if the body denies the request. Mr. Green responded that this is in the environmentally critical zone, which requires approval based on the code, and that the applicant is representing that they have the mean-high water line. There was a follow-up question on what is currently allowed. The staff member stated he would need to follow up but noted that alcohol cannot be served without a structure. Mr. Yovanovich requested to incorporate Alexis Crespo's testimony. He expressed his disagreement to Jason Green's remarks on service and consumption on the beach. The staff member agreed to the attorney's remarks that the COP is associated with the building of the Outrigger property but pointed to size and timing issues. LPA Member Boan commented that, without the comprehensive plan amendment, this item would be inconsistent with the document. Mr. Green clarified that the issue revolved around the size of the request. Mr. Yovanovich argued that this item is irrelevant to the amendment. He described a scenario where alcohol consumption and service would not be allowed despite the right to rebuild the hotel.

No public comment.

LPA Member Dunlap moved to approve special exception SEZ20240012, COP, 6200 Estero Blvd., seconded by LPA Member Schoonover.

The motion carried 6-1, with Mr. Boan dissenting.

H. VAR20250299, 6200 Estero Blvd. (Outrigger Redevelopment)

VARIANCE (QUASI-JUDICIAL)

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR 20250299, REQUESTING A VARIANCE OF 15 FEET REDUCTION TO THE REQUIRED 25-FOOT SIDE YARD SETBACK FOR AN ACCESSORY STRUCTURE TO THE OUTRIGGER RESORT IN THE EC ZONING DISTRICT TO ALLOW A 10 FOOT SIDE YARD SETBACK IN ORDER TO ACCOMMODATE HISTORICAL LOCATION OF THE TIKI HUT, FOR THE PROPERTY LOCATED AT 6200 ESTERO BLVD, GENERALLY REFERRED TO AS STRAP NUMBER: 33-46-24-W3-00012.0000 IN FORT MYERS BEACH; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Chair Cereceda read the title of the resolution. She asked if there were any additional ex parte communications. None were disclosed. Jason Green of

Community Development provided a summary of the request as outlined in the yellow sheet. He presented the staff's opinion that the request does not meet the criteria and referred to the recommended conditions for approval.

No public comment.

There were additional discussions and clarification on what is being considered for this item.

LPA Member Eckmann moved to deny the VAR20250299, requesting a reduction of 15 feet to the required 25-foot setback, seconded by LPA Member Schoonover.

The motion carried unanimously by roll call vote.

Chair Cereceda provided some concluding remarks and expressed hope that this brings some encouragement to London Day before they present before the Council. The agency took a brief recess.

VIII. ADMINISTRATIVE AGENDA

No items.

IX. LPA MEMBERS ITEMS/REPORTS

LPA Member Boan wished to clarify that his "no" vote on the second to last special exception was based on designating 2.5 acres without knowing how this would be incorporated into the plan. Chair Cereceda asked if there was a way to amend requirements, especially for commercial applications, on submitting realistic representations of the project. LPA Member Sudduth stated that he is fine with drawings but that three-dimensional models may be too much to ask for, at this time. LPA Member Eckmann remarked on the high costs. LPA Member Dunlap mentioned that it may create inflexibility in some circumstances. Mr. Boan noted that this could be a tool for larger projects but would be burdensome for smaller developments. Mr. Sudduth expressed his desire to not introduce barriers to the process. Mr. Dunlap does not believe that the visual component would create a different decision from the agency.

X. LPA ATTORNEY ITEMS/REPORTS

No items.

XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS

No items.

XII. ITEMS FOR NEXT MONTHS AGENDA

There was confirmation that the LPA will meet on June 16, 2026. LPA Member Boan noted that, if the meeting is not too long, the agency could add a discussion on the definition of a public benefit, which was previously requested by Chair Cereceda. Mr. Green provided his preference for placing this item in August. The Chair stated that she will be absent for that meeting. The staff member said that he can provide documents and previous conversations as a starting point. LPA

Member Dunlap would like to explore the possibility of holding another meeting and recommendation on this matter. He asked to see if a joint meeting with the Council would be warranted.

The Chair noted that she will report back with her findings.

XIII. ADJOURNMENT

LPA Member Dunlap moved to adjourn. The meeting was adjourned at 3:33 p.m.

DRAFT

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

Yellow Sheet Number: **2026-569**

1. Request:

Meeting Date: June 16, 2026

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20260070, REQUESTING A VARIANCE FROM LDC TABLE 34-3 TO REDUCE THE REQUIRED SIDE SETBACK TO ALLOW A BALCONY TO EXTEND 2 FEET INTO THE REQUIRED 6.5 FOOT SIDE SETBACK FOR SINGLE FAMILY RESIDENCE IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 5520 ESTERO BLVD, GENERALLY REFERRED TO AS STRAP NUMBER: 33-46-24-W1-00205.0170 IN FORT MYERS BEACH; 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 Local Planning Agency (LPA) may make a recommendation to the Town Council regarding the variance request or may approve the variance request by unanimous vote.

What the action accomplishes:

The Local Planning Agency's recommendation shall be forwarded to the Town Council, or, if the request is approved by unanimous vote, shall constitute final agency action.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

Bella Boo on Estero LLC, on behalf of Ileana Musa, owner of 5520 Estero Blvd, requests a variance from LDC Table 34-3 to allow a balcony to extend 2 feet into the required 6.5-foot side setback for a single-family residence in the RM zoning district, resulting in a 4.5-foot side setback.

The subject property was formerly a single-family one-story home with 1,372 square feet built in 1935. The home was destroyed during the hurricane. The applicant is reconstructing a residence following storm damage and elevating the structure to comply with current FEMA flood elevation requirements and applicable building codes. The proposed single-family home is 3,010 SF and covers around 40 % of the total site.

The subject property is an oddly shaped lot with a width varying from 30 feet to 50 feet and depth of approximately 260 ft. The building was severely damaged in the 2022 storm.

Attachments:

1. NS LPA Resolution 2026-07, 5520 Estero Blvd
2. Exhibit A: PLAN SET_MUSA24-01-DEP-3.25.26(ESIGN)
3. Staff report: 5520 Estero Blvd

Financial Impact:

Unknown

6. Alternative Action

Deny

7. **Staff Recommendations:**

The staff recommends **APPROVAL WITH CONDITIONS** for the variance request in VAR20260070, to allow a balcony to extend 2 feet into the required 6.5-foot side setback for a single-family residence in the RM zoning district.

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator

Date: June 05, 2026

Georgina Cid, Community Development Manager

Date: June 05, 2026

Frankie Kropacek, Community Development Director

Date: June 05, 2026

nancy stuparich, Town Attorney

Date: June 07, 2026

Amy Baker, Town Clerk

Date: June 08, 2026

RESOLUTION 2026-LPA-07

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20260070, REQUESTING A VARIANCE FROM LDC TABLE 34-3 TO REDUCE THE REQUIRED SIDE SETBACK TO ALLOW A BALCONY TO EXTEND 2 FEET INTO THE REQUIRED 6.5 FOOT SIDE SETBACK FOR SINGLE FAMILY RESIDENCE IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 5520 ESTERO BLVD, GENERALLY REFERRED TO AS STRAP NUMBER: 33-46-24-W1-00205.0170 IN FORT MYERS BEACH; 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, Applicant Bella Boo on Estero, LLC, on behalf of the property owner, Ileana Musa, is requesting a variance from LDC Table 34-3 to reduce the side setback to allow a balcony to extend 2 feet into the required 6.5-foot side setback for a single-family residence in the RM zoning district, for the real property located at 5520 Estero Blvd, Fort Myers Beach, Florida (hereinafter "Subject Property"); and

WHEREAS, the STRAP for the Subject Property is 33-46-24-W1-00205.0170; 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 Multifamily (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 is an oddly shaped lot with a width varying from 30 feet to 50 feet and a depth of 260 feet; and

WHEREAS, the Subject Property is a conforming lot in the RM zoning district; and

WHEREAS, LDC Table 34-3 requires a side setback of 6.5 feet for all properties with less than 50 feet in the RM zoning district; and

WHEREAS, the Applicant requests a variance from LDC Table 34-3 to allow a balcony to extend 2 feet into the required 6.5-foot side setback for a single-family residence in the RM zoning district, resulting in a 4.5-foot side setback; and

WHEREAS, the Applicant is now requesting a variance from LDC Table 34-3 to reduce the required 6.5-foot side setback by 2 feet to reconstruct the residence with a balcony encroachment for a single-family residence in the RM zoning district; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on June 16, 2026, 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/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted **is/is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance **will/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the 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.

WHEREAS, eligible members of the LPA voted ____ to ____ by roll call vote to approve/ approve with conditions/ deny the requested variance with the following conditions:

1. Approval of this variance does not give the Applicant a vested 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 approval shall apply solely to the balcony encroachment depicted on the submitted site plans and shall not authorize any additional encroachments into the required side setback.
3. This variance applies to the modified side setbacks as shown in "Exhibit A" 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. VAR20260070, with the conditions contained herein, received/ did not receive unanimous approval from eligible voting members of the LPA on June 16, 2026.
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 Ed Schoonover	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS ____ day of _____, 2026.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

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 _____, 2026.

EXHIBITS
Exhibit A: Site Plan

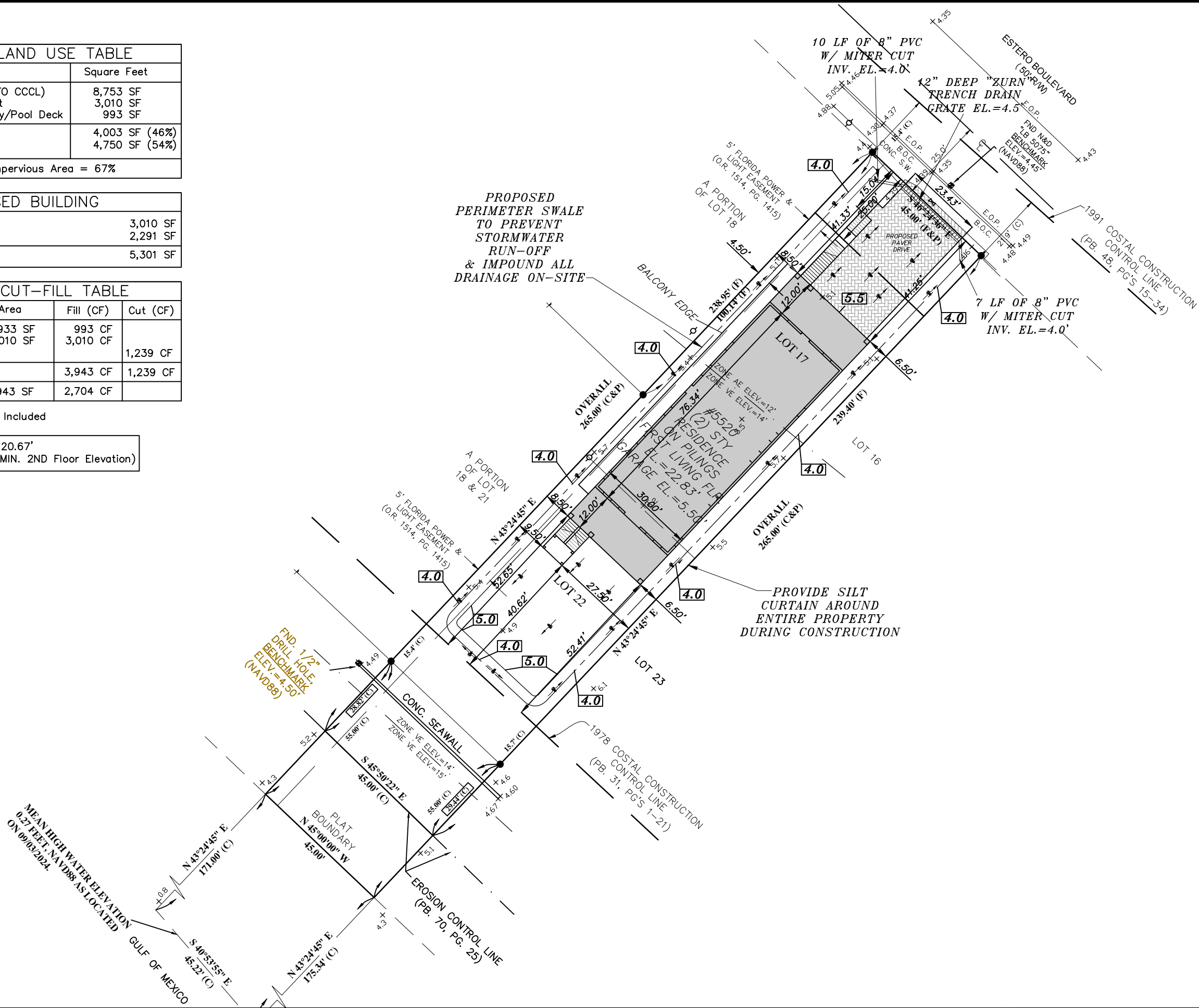
PROPOSED LAND USE TABLE	
Description	Square Feet
Project Site Area (UP TO CCCL)	8,753 SF
Proposed House Footprint	3,010 SF
Proposed Pavers/Driveway/Pool Deck	993 SF
Total Impervious Area	4,003 SF (46%)
Total Pervious Area	4,750 SF (54%)
* Per FMB Code MAX. Impervious Area = 67%	

PROPOSED BUILDING	
Garage (Ground Floor)	3,010 SF
A/C area (2ND Floor)	2,291 SF
Total	5,301 SF

PROPOSED CUT-FILL TABLE			
Description	Area	Fill (CF)	Cut (CF)
Driveway	933 SF	993 CF	
Building	3,010 SF	3,010 CF	
Drainage			1,239 CF
Sub-Total		3,943 CF	1,239 CF
Total	3,943 SF	2,704 CF	

NOTE: Piling Volume Not Included

First Horizontal Beam = 20.67'
20.67' + 2.16' = 22.83' (MIN. 2ND Floor Elevation)



DATE

REVISIONS

NO.

REV.

DATE

APPROVED

Digitally signed by ROBERT W. C. [Signature]

Date: 2026.03.25 11:38:35 -0400

CA No. 13868

RESIDENTIAL & COMMERCIAL ENGINEERING & DESIGN SERVICES

LIS ENGINEERING, LLC

5520 ESTERO BLVD., FORT MYERS BEACH, FL 33931

PH: 772-527-7500

WWW.LIS-FL.COM

SCALE:

1" = 30'-0"

DATE:

MARCH 25, 2026

SHEET

DEP1

MUS24-01

CERTIFICATION FROM A REGISTERED PROFESSIONAL THAT THE FILL MATERIAL MEETS THE SPECIFICATIONS/CRITERIA OF SUBSECTION 62B-33.005(7), F.A.C. OR FILL MATERIAL FROM IMMOKALEE, FL. - STEWART MATERIALS APPROVED BY FORT MYERS BEACH AND F.D.E.P.





Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20260070

CASE NAME: 5520 Estero LLC requesting a side setback variance from LDC Table 34-3 in the RM zoning district.

HEARING DATE: June 16, 2026, 9:00 am

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

**PREPARED/
SUBMITTED BY:** Uma Sarmistha, Ph.D./ Jason Green, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Bella Boo on Estero, LLC/ Ileana Musa

Request: The applicant requests a variance from LDC Table 34-3 to allow a balcony to extend 2 feet into the required 6.5-foot side setback for a single-family residence in the RM zoning district, resulting in a 4.5-foot side setback.

Subject property: See attached site plan

Physical Address: 5520 Estero Blvd

STRAP #: 33-46-24-W1-00205.0170

FLU: Mixed Residential

Zoning: Residential Multi-family (RM)

Adjacent zoning and land uses:

North:	RESIDENTIAL MULTIFAMILY (RM) Mixed Residential – Vacant
South:	Commercial Resort (CR) Mixed Residential – Vacant
East:	RESIDENTIAL CONSERVATION (RC) Mixed Residential
West:	Environmental Conservation (EC) Conservation/ Gulf

II. BACKGROUND AND ANALYSIS

Background:

Bella Boo on Estero LLC, on behalf of Ileana Musa, owner of 5520 Estero Blvd, requests a variance from LDC Table 34-3 to allow a balcony to extend 2 feet into the required 6.5-foot side setback for a single-family residence in the RM zoning district, resulting in a 4.5-foot side setback.

The subject property was formerly a single-family one-story home with 1,372 square feet built in 1935. The home was destroyed during the hurricane. The applicant is reconstructing a residence following storm damage and elevating the structure to comply with current FEMA flood elevation requirements and applicable building codes. The proposed single-family home is 3,010 SF and covers around 40 % of total site.

The subject property is an oddly shaped lot with a width varying from 30 feet to 50 feet and depth of approximately 260 ft. The building was severely damaged in the 2022 storm.

Analysis:

The purpose of the RM zoning district is to designate suitable locations for a wide variety of multifamily residences. As per table 34-3; a conforming lot in the RM zoning district is required to have a minimum width of 75 feet (however *Note (6) suggests: Single-family and two-family homes in the RM zoning district must maintain a 6.5-foot side setback for lots less than 50 feet*); a minimum depth of 100 feet, and a minimum lot area of 7,500 square feet. The subject property is an oddly shaped lot with a width varying from 30 feet to 50 feet (at front) and depth of approximately 260 ft.

As per LDC setback table 34-3, the street setback for RM zoning district is 25 and rear set back to gulf is 50 feet. The side setback varies based on the width of the property; with 75 feet width the setback is 20 while the *Single-family and two-family homes in the RM zoning district must maintain a 6.5-foot side setback for lots less than 50 feet*). The dimension of the

lot is very unique with varying depth, that poses problem in the reconstruction of the building under FEMA elevation standard. Thus, the applicant is requesting variance for a balcony on 2nd floor encroaching 2 feet into the required side setback.

Staff finds that post-storm reconstruction requirements, including elevation standards, do create design constraints on many Gulf-front and near-shore properties on Fort Myers Beach. However, the applicant has not fully demonstrated that the property itself possesses exceptional physical conditions unique from similarly situated residential lots that would prevent reasonable use of the property without the variance. The request appears primarily related to maintaining the proposed balcony configuration and outdoor living area rather than enabling construction of the principal structure itself.

Based upon the application materials and the criteria contained in LDC Section 34-87, staff finds that the applicant has demonstrated that the request is minor in nature and unlikely to adversely affect surrounding properties or public welfare. However, staff also find that the evidence supporting the existence of a unique hardship specific to the property is limited, as the encroachment pertains to a discretionary balcony feature rather than the principal structure.

Neighborhood Compatibility:

The subject property is located within an older residential neighborhood characterized primarily by single family homes. Based on aerial images available on Property appraiser's website, the majority of surrounding properties appear to comply with the Town's required rear setback standards. The requested variance would allow only a minor portion of the proposed balcony to encroach into the required side setback area. Given the limited nature of the encroachment and its location at the side of the property, the request does not appear to create adverse impacts to the surrounding neighborhood or pose a threat to the public health, safety, or welfare.

Findings and Conclusions:

LDC Section 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.*

Staff finds that while the property does not contain extraordinary hardship conditions unique from other similarly situated lots, the requested variance is de minimis in nature and rigid application of the setback requirement is not essential to protect public policy in this instance. The request is limited to a minor balcony encroachment and does not involve habitable floor area or the principal structure.

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

The conditions justifying the variance are the result of the unique shape of the lot. Staff finds that the conditions justifying the variance are **partially the result of circumstances beyond the applicant's control**, including current FEMA elevation standards and applicable building code requirements associated with post-storm reconstruction.

However, the specific design and placement of the balcony are discretionary architectural choices by the applicant. Therefore, while the underlying reconstruction constraints are not self-created, the specific encroachment request is at least partially attributable to the proposed design. Staff recommends redesigning the plan to comply with current zoning requirements.

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

Staff finds that the requested variance **appears to be the minimum variance necessary** to accommodate the proposed balcony design. The request is limited solely to balcony encroachment and does not involve habitable floor area or the principal enclosed structure. The variance would allow a reduction from the required 6.5-foot side setback to 4.5 feet at the balcony location only. Nevertheless, the application does not fully demonstrate that alternative balcony configurations or modifications could not eliminate or further reduce the encroachment.

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

Granting the variance will not be injurious to the neighborhood or otherwise detrimental to public welfare. Additionally, the applicant has indicated that adjacent property owners have expressed no objection to the request.

- 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.*

Staff finds that the conditions or circumstances related to the requested variance are not of such a general or recurrent nature as to make amendment of the Land Development Code more reasonable or practical. The request is specific to this parcel, the proposed reconstruction design, and the unique site conditions associated with the subject property.

III. RECOMMENDATION

Staff has reviewed the request for a variance from LDC Table 34-3 to allow a balcony to extend 2 feet into the required 6.5-foot side setback for a single-family residence in the RM zoning district.

Staff finds the requested variance to be de minimis in nature because the encroachment is limited to an unenclosed second-floor balcony extending 2 feet into the required side setback. Staff further find that the request will not adversely affect neighboring properties, impair public welfare, or alter the character of the surrounding neighborhood. Accordingly, staff recommends APPROVAL WITH CONDITIONS of VAR20260070.

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 a vested 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 approval shall apply solely to the balcony encroachment depicted on the submitted site plans and shall not authorize any additional encroachments into the required side setback.
3. This variance applies to the modified side setbacks as shown in "Exhibit A" only. No other portion of the single-family dwelling or accessory structure(s) may be extended into a required setback.

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

Yellow Sheet Number: **2026-576**

1. Request:

Meeting Date: June 16, 2026

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250260, REQUESTING A VARIANCE FROM LDC SECTION 34 TABLE 34-3 - FOR THE PROPERTY LOCATED AT 100/102 BAY MAR DRIVE GENERALLY REFERRED TO AS STRAP NUMBER 29-46-24-W2-00155.1010 IN FORT MYERS BEACH, TO REDUCE THE REQUIRED 20-FOOT REAR SETBACK BY 7.9 FEET TO ALLOW A REAR SETBACK OF 12.1 FEET FOR AN ENCLOSED ACCESS STAIRCASE EXTENDING TO THE SECOND FLOOR OF A TWO-FAMILY RESIDENCE WITHIN THE RESIDENTIAL CONSERVATION (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 Local Planning Agency (LPA) may make a recommendation to the Town Council regarding the variance request or may approve the variance request by unanimous vote.

What the action accomplishes:

The Local Planning Agency's recommendation shall be forwarded to the Town Council, or, if the request is approved by unanimous vote, shall constitute final agency action.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

Fernando Virto, the owner of the property located at 100/102 Bay Mar Drive, is requesting a variance from Table 34-3 of the Land Development Code (LDC) to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for an enclosed access staircase extending to the second floor of a proposed two-family residence within the Residential Conservation (RC) zoning district.

The property is a corner lot situated at the intersection of Estero Boulevard and Bay Mar Drive. The lot is an irregularly shaped corner lot, with a depth ranging from 101 to 75 feet, and a width ranging from 97 feet to 100 feet. The property is currently vacant, and prior to Hurricane Ian, the property contained a duplex constructed in the early 1980s. The subject property is a conforming lot in RC zoning district. Based on available Lee County Property Appraiser aerial imagery, the previously existing duplex appears to have contained nonconforming rear setbacks.

The applicant is proposing the construction of a new two-family residence that includes an enclosed staircase extending to the second floor in the rear setback. As proposed, the enclosed staircase would maintain a rear setback of 12.1 feet where 20 feet is required. The applicant is, therefore, requesting a variance of 7.9 feet from the required rear setback to allow the proposed enclosed staircase encroachment.

Attachments:

1. NS LPA Resolution XX VAR 20250260 100-102 Bay Mar Drive
2. Exhibit A - Site Plan
3. Staff Report

Financial Impact:

Unknown

6. Alternative Action

Approve/ Approve with conditions

7. Staff Recommendations:

Staff recommends **DENIAL** of VAR20250260, request for a variance from *Table 34-3* to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for an enclosed access staircase extending to the second floor of a proposed two-family residence within the Residential Conservation (RC) zoning district.

8. Recommended Approval:

_____	Date: June 01, 2026
Kendra Rosa, Zoning Coordinator	
_____	Date: June 02, 2026
Georgina Cid, Community Development Manager	
_____	Date: June 02, 2026
Frankie Kropacek, Community Development Director	
_____	Date: June 07, 2026
nancy stuparich, Town Attorney	
_____	Date: June 08, 2026
Amy Baker, Town Clerk	

RESOLUTION NUMBER 2026-LPA-XX

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250260, REQUESTING A VARIANCE FROM LDC SECTION 34 TABLE 34-3 - FOR THE PROPERTY LOCATED AT 100/102 BAY MAR DRIVE GENERALLY REFERRED TO AS STRAP NUMBER 29-46-24-W2-00155.1010 IN FORT MYERS BEACH, TO REDUCE THE REQUIRED 20-FOOT REAR SETBACK BY 7.9 FEET TO ALLOW A REAR SETBACK OF 12.1 FEET FOR AN ENCLOSED ACCESS STAIRCASE EXTENDING TO THE SECOND FLOOR OF A TWO-FAMILY RESIDENCE WITHIN THE RESIDENTIAL CONSERVATION (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, Fernando Virto ("Applicant") is the owner of the property located at 100/102 Bay Mar Drive ("Subject Property"), is requesting a variance from LDC Section 34 Table 34-3 to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for an enclosed access staircase extending to the second floor of a two-family residence in the Residential Conservation (RC) zoning district; and

WHEREAS, the STRAP number for the Subject Property is 29-46-24-W2-00155.1010; and;

WHEREAS, the Subject Property is in the "Low Density" 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, the RC zoning district requires a minimum lot width of 45 feet and a minimum lot depth of 80 feet, with a total lot area of 4,000 square feet; and

WHEREAS, the Subject Property is an oddly shaped lot with depth ranging from 101 to 75 feet, and a width ranging from 97 feet to 100 feet; and

WHEREAS, the Subject Property is a conforming lot in the RC zoning district; and

WHEREAS, LDC Table 34-3 requires a rear setback of 20 feet for all properties in the RC zoning district; and

WHEREAS, the Subject Property supported a two-family residence prior to Hurricane Ian. The previously existing two-family structure did not meet the requirements of the current Town's LDC; and

WHEREAS, the Applicant is now proposing the construction of a new two-family residence that includes an enclosed staircase extending to the second floor in the rear setback. As proposed, the enclosed staircase would maintain a rear setback of 12.1 feet where 20 feet is required; and

WHEREAS, the Applicant is requesting a variance of 7.9 feet from the required rear setback to allow the proposed enclosed access staircase encroachment; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on June 16, 2026, 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/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance are/ are not the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted is/is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the 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.

WHEREAS, eligible members of the LPA voted ___ to ___ by roll call vote to approve/ approve with conditions/ deny the requested special exception 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 rear setback from the east property boundary for an enclosed access staircase associated with the proposed two-family dwellings as shown on the site plan provided. Demolition or substantial damage to the residential structure shall render the variance to be null and void.
3. This variance applies to the rear setback from the east side property boundary for the enclosed access staircase of a newly proposed two-family structure on the subject property only. Any additional modification of the two-family structure or additional construction on the subject property must comply with all applicable regulations or seek a new variance.
4. This variance applies to the modified rear setbacks as shown in "Exhibit A" only. No other portion of the two-family residence 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. VAR20250260, with the conditions contained herein, received/ did not receive unanimous approval from eligible voting members of the LPA on June 16, 2026.

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 LPA member ____ and seconded by LPA member _____ 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 Ed Schoonover	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS ____ day of ____, 2026.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

ATTEST:

Amy Baker, Town Clerk

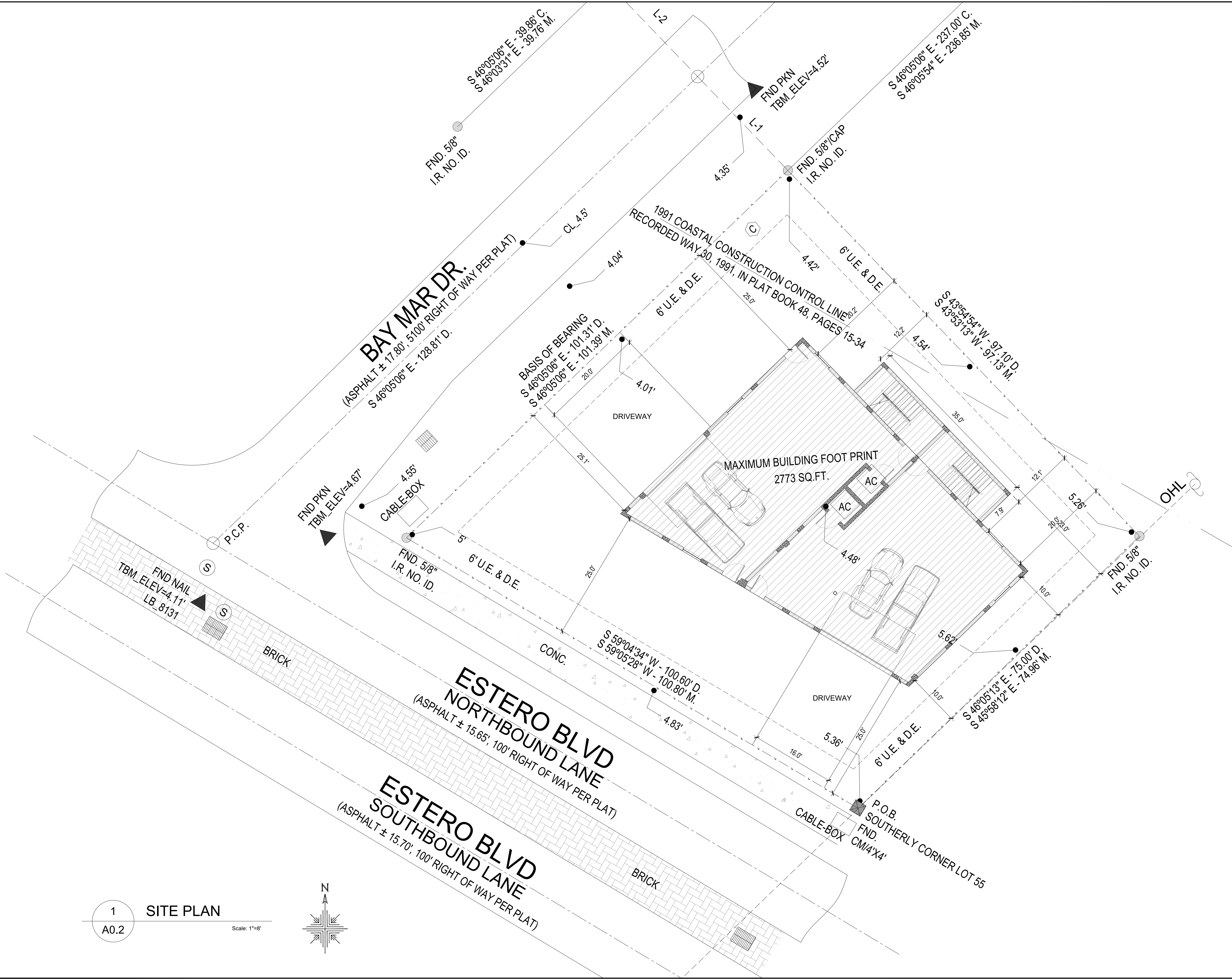
**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Vose Law Firm, Town Attorney

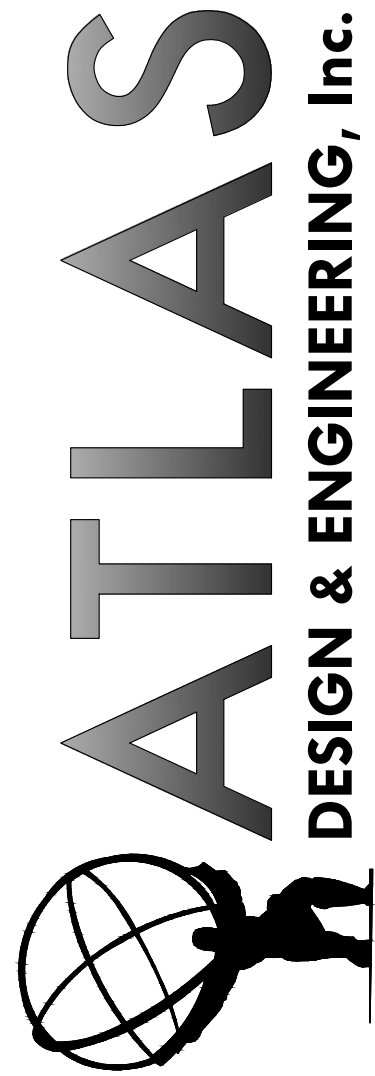
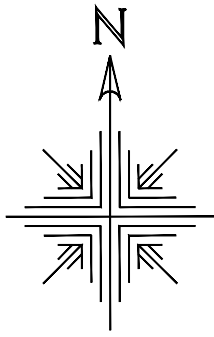
This Resolution was filed in the Office of the Town Clerk on this ____ day of ____, 2026.

Attachment:

Exhibit A: Site Plan



1 SITE PLAN
A0.2
Scale: 1"=8'



Civil /Structural/
Mechanical/Electrical/
Plumbing Engineering

8250 College Parkway, Ste 101
Fort Myers, Florida 33919
Tel: (239)-267-7432
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www.AtlasDesignEngineering.com

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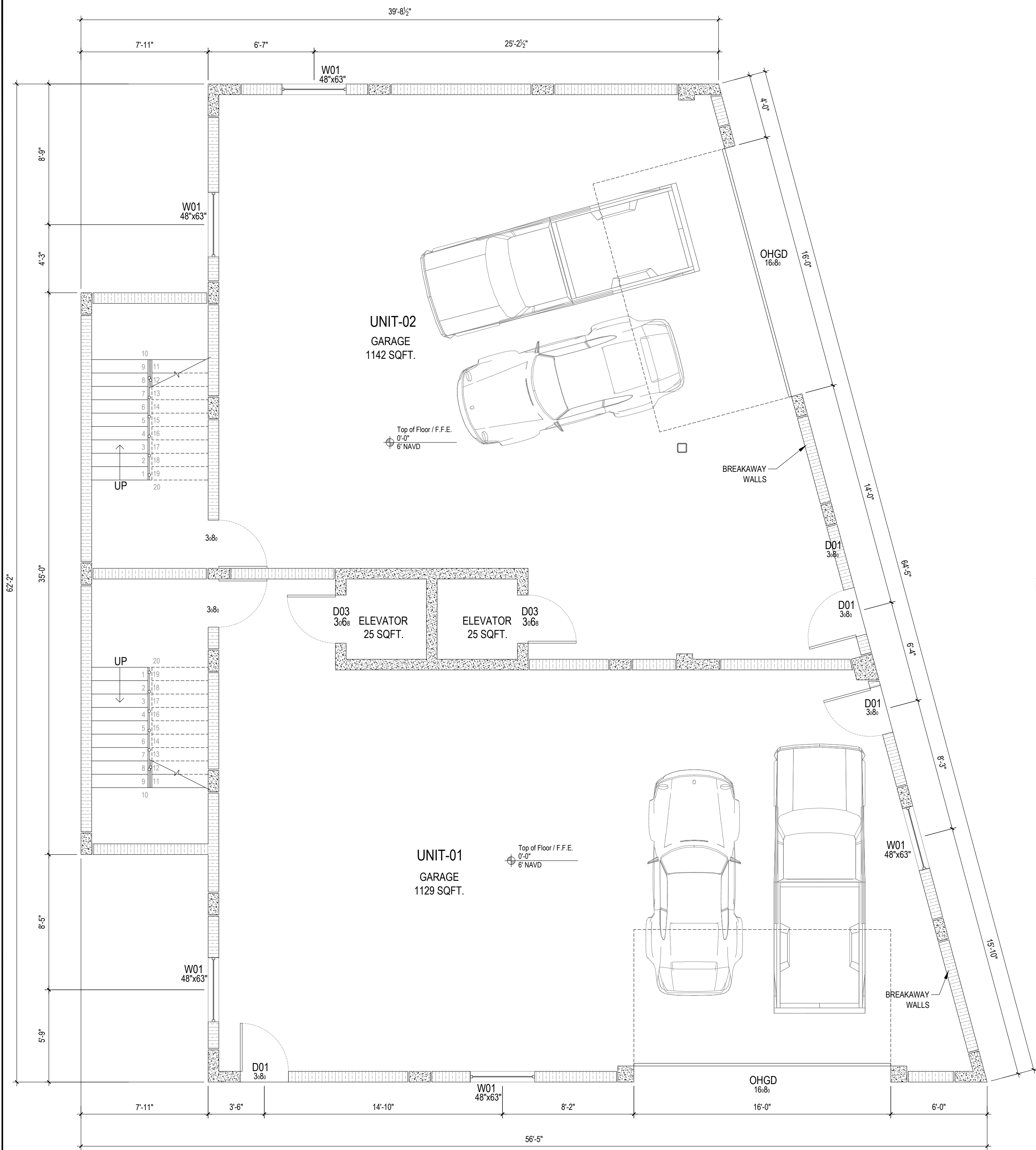
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JOB #25-5606

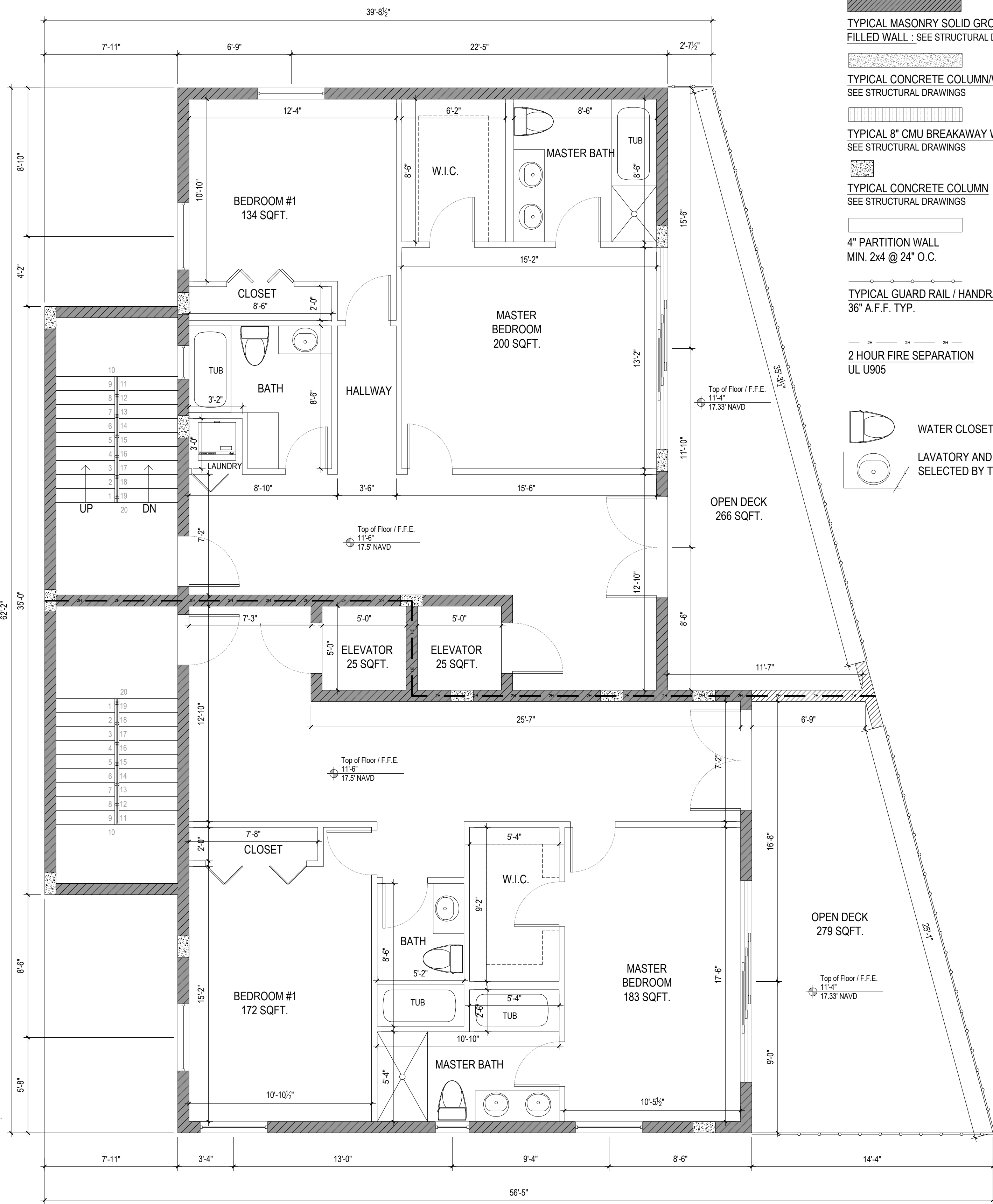
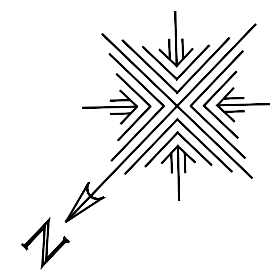
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FORT MYERS BEACH, FL 33931

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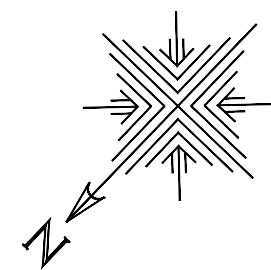
A0.2



1
A1.1
GROUND FLOOR PLAN
Scale: 1/4" = 1' - 0"



2
A1.1
1ST LEVEL FLOOR PLAN
Scale: 1/4" = 1' - 0"



LEGEND

- TYPICAL MASONRY SOLID GROUT FILLED WALL : SEE STRUCTURAL DRAWINGS
- TYPICAL CONCRETE COLUMN/WALL : SEE STRUCTURAL DRAWINGS
- TYPICAL 8" CMU BREAKAWAY WALL : SEE STRUCTURAL DRAWINGS
- TYPICAL CONCRETE COLUMN SEE STRUCTURAL DRAWINGS
- 4" PARTITION WALL MIN. 2x4 @ 24" O.C.
- TYPICAL GUARD RAIL / HANDRAIL 36" A.F.F. TYP.
- 2 HOUR FIRE SEPARATION UL U905
- WATER CLOSET
- LAVATORY AND VANITY AS SELECTED BY THE OWNER

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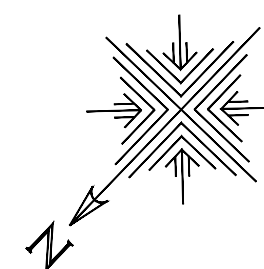
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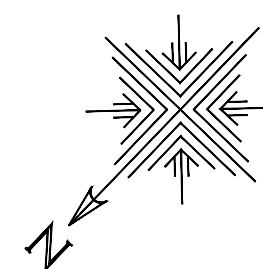
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FORT MYERS BEACH, FL 33931

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[SHEET NUMBER]

A1.1



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



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

LEGEND

TYPICAL MASONRY SOLID GROUT
FILLED WALL : SEE STRUCTURAL DRAWINGS

TYPICAL CONCRETE COLUMN/WALL :
SEE STRUCTURAL DRAWINGS

TYPICAL 8" CMU BREAKAWAY WALL :
SEE STRUCTURAL DRAWINGS

TYPICAL CONCRETE COLUMN
SEE STRUCTURAL DRAWINGS

4" PARTITION WALL
MIN. 2x4 @ 24" O.C.

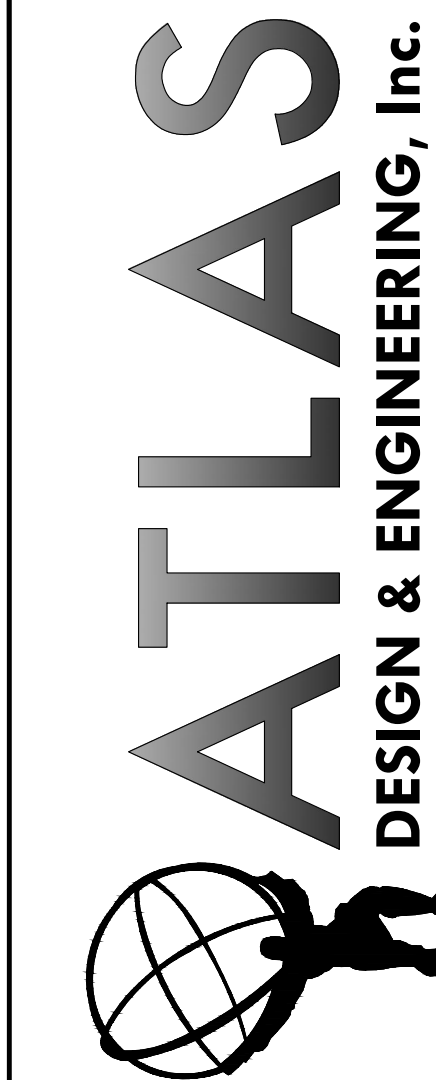
TYPICAL GUARD RAIL / HANDRAIL
36" A.F.F. TYP.

2 HOUR FIRE SEPARATION
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WATER CLOSET

 LAVATORY AND VANITY AS
SELECTED BY THE OWNER



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JOB #25-5606 |

NEW DUPLEX

100/102 BAY MAR DR,
FORT MYERS BEACH, FL 33931

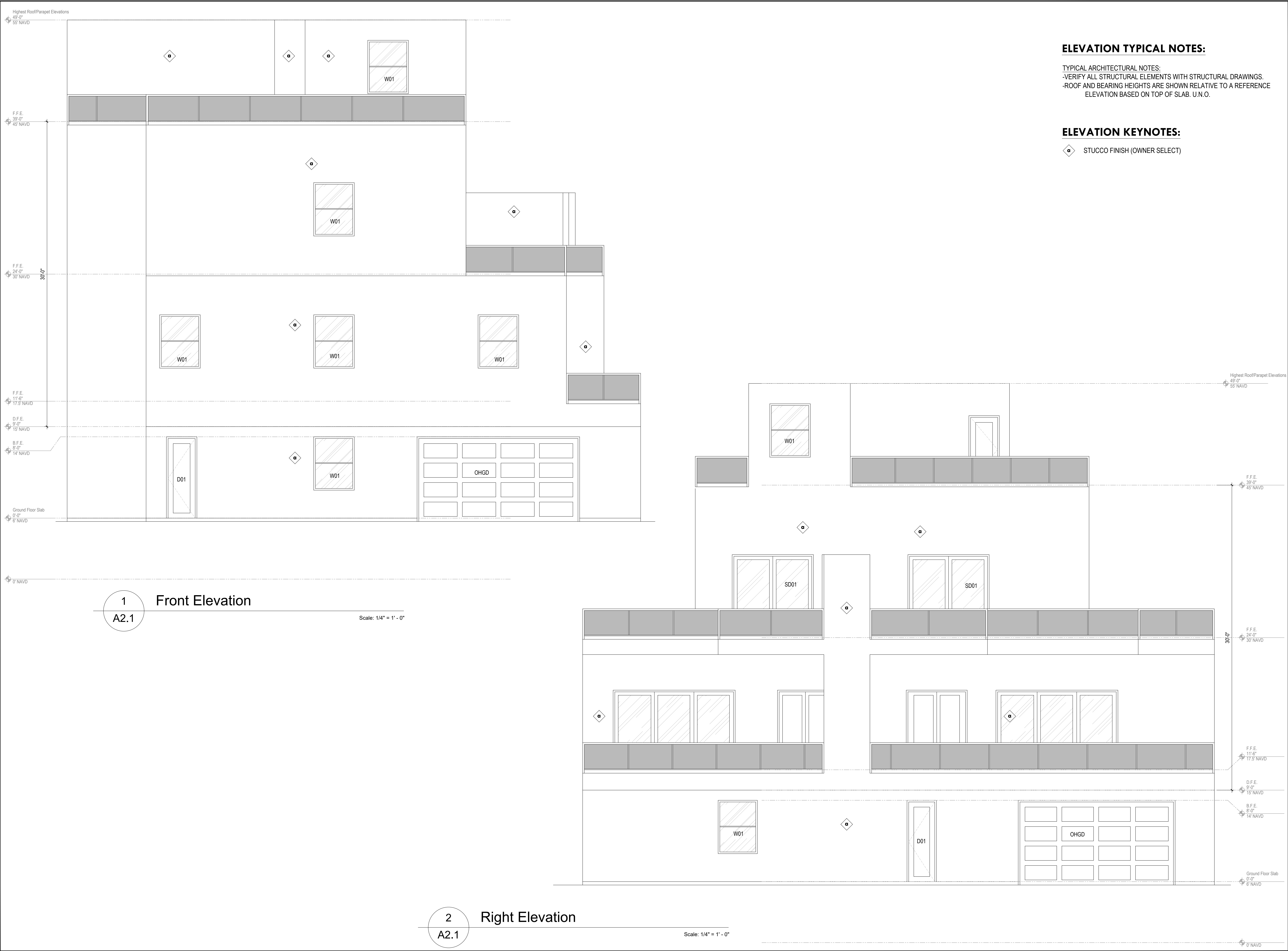
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2026.03.10

JOB #25-5606

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FORT MYERS BEACH, FL 33931

2026.03.10

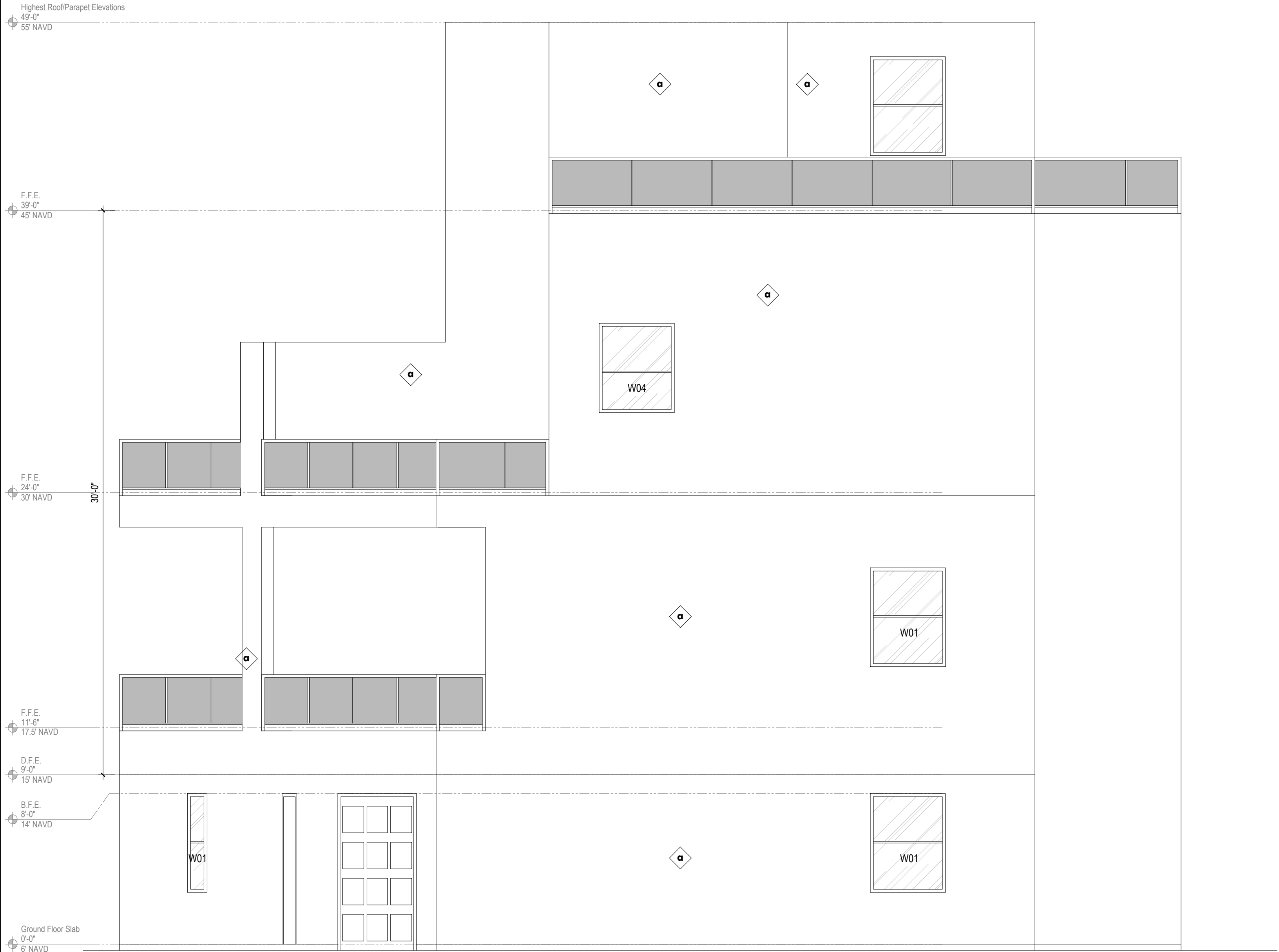
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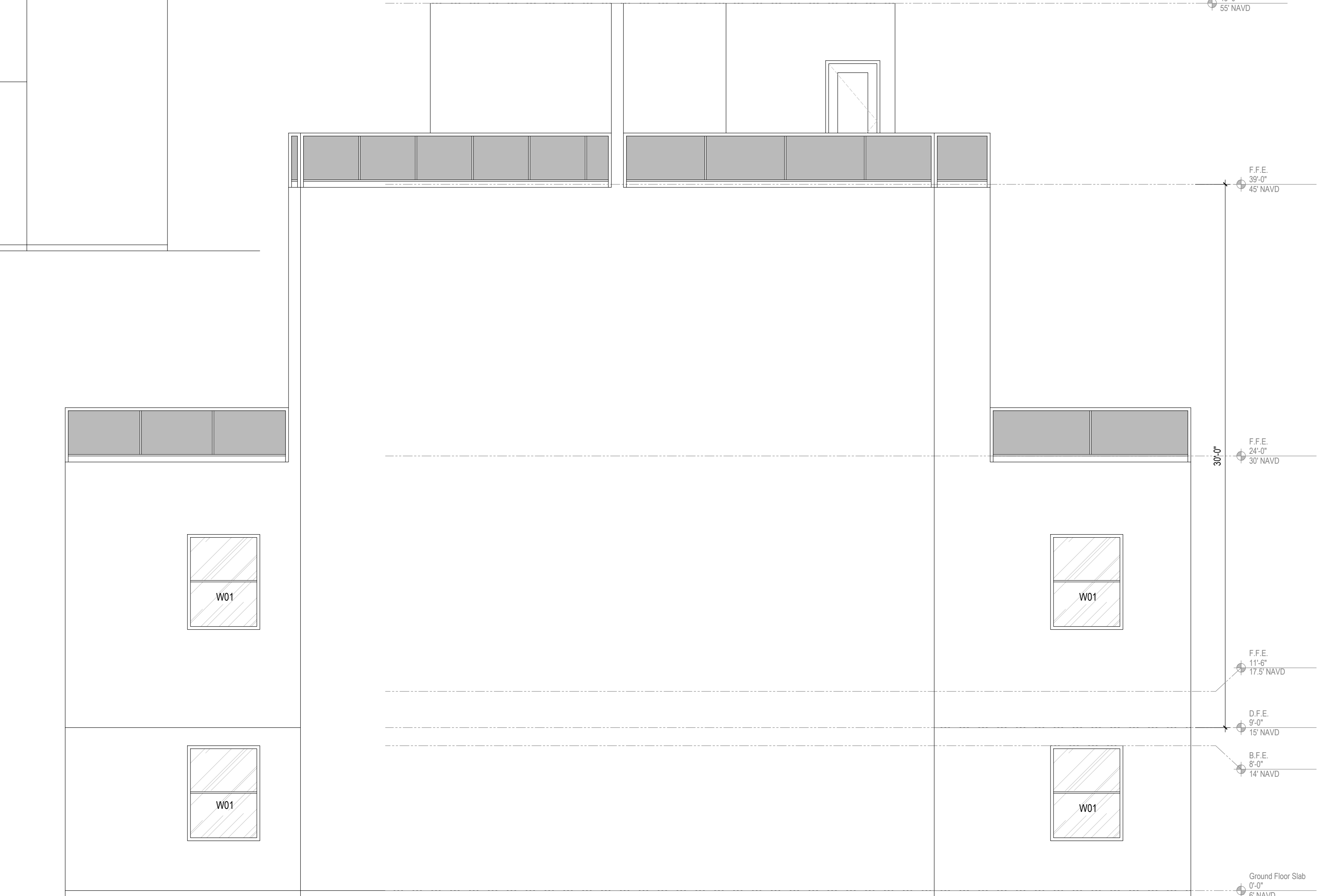
A2.1

Page 68 of 189



1
A2.2 Rear Elevation

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



2
A2.2 Left Elevation

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

ELEVATION TYPICAL NOTES:

TYPICAL ARCHITECTURAL NOTES:
-VERIFY ALL STRUCTURAL ELEMENTS WITH STRUCTURAL DRAWINGS.
-ROOF AND BEARING HEIGHTS ARE SHOWN RELATIVE TO A REFERENCE ELEVATION BASED ON TOP OF SLAB. U.N.O.

ELEVATION KEYNOTES:

◈ STUCCO FINISH (OWNER SELECT)

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PRINT	REVISION
CHECK SET	2026.03.10

JOB #25-5606

NEW DUPLEX

100102 BAY MAR DR,
FORT MYERS BEACH, FL 33931

2026.03.10
[DRAWN BY] NV
[CHECKED BY]
[SHEET NUMBER]

A2.2



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20250260

CASE NAME: 100/102 Bay Mar Drive; a variance from Table 34-3 to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for an enclosed access staircase extending to the second floor of a proposed two-family residence within the Residential Conservation (RC) zoning district..

LPA

HEARING DATE: June 16, 2026

STAFF

RECOMMENDATION: Denial

PREPARED/

SUBMITTED BY: Stephanie Virga/Jason Green AICP

I. APPLICATION SUMMARY

Applicant/Owner: Fernando Virto

Request: A variance from Table 34-3 to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for the construction of an enclosed staircase extending to the second floor of a proposed two-family residence in the Residential Conservation (RC) zoning district.

Subject property: See attached site plan

Physical Address: 100/102 Bay Mar Drive

STRAP #: 29-46-24-W2-00155.1010

FLU: Low Density Residential

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North:	LOW DENSITY RESIDENTIAL Vacant
South:	MIXED DENSITY RESIDENTIAL Single family residential
East:	LOW DENSITY RESIDENTIAL Vacant
West:	LOW DENSITY RESIDENTIAL Vacant

II. BACKGROUND AND ANALYSIS

Background:

Fernando Virto, the owner of the property located at 100/102 Bay Mar Drive, is requesting a variance from Table 34-3 of the Land Development Code (LDC) to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for an enclosed access staircase extending to the second floor of a proposed two-family residence within the Residential Conservation (RC) zoning district.

The property is a corner lot situated at the intersection of Estero Boulevard and Bay Mar Drive. The lot is an irregularly shaped corner lot, with a depth ranging from 101 to 75 feet, and a width ranging from 97 feet to 100 feet. The property is currently vacant, and prior to Hurricane Ian, the property contained a duplex constructed in the early 1980s. The subject property is a conforming lot in RC zoning district. Based on available Lee County Property Appraiser aerial imagery, the previously existing duplex appears to have contained nonconforming rear setbacks.

The applicant is proposing the construction of a new two-family residence that includes an enclosed staircase extending to the second floor in the rear setback. As proposed, the enclosed staircase would maintain a rear setback of 12.1 feet where 20 feet is required. The applicant is, therefore, requesting a variance of 7.9 feet from the required rear setback to allow the proposed enclosed staircase encroachment.

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 the RC zoning district is at least 45 feet wide and 80 feet deep or 4,000 square feet of area. The subject property is a conforming lot in the RC zoning district with a depth ranging from 101 to 75 feet, and a width ranging from 97 feet to 100 feet.

The property supported a duplex prior to Hurricane Ian. Based on the current code, the applicant is legally permitted to build a two-family on the property today.

As per LDC Section 34-643 and Table 34-3, properties within the RC zoning district are required to maintain a minimum 25-foot street setback, 20-foot side street setback, 10-foot side setback, and 20-foot rear setback. The previously existing duplex did not meet the requirements of the current code. The applicant is now proposing a two-family principal structure with a street setback of 25 feet, side street setback of 25 feet, 10 feet side setback and 12.1 feet rear setback. The Applicant is proposing an enclosed access staircase extending to the second floor and encroaching 7.9 feet into the required rear setback.

Pursuant to Section 34-638(d)(2)b. of the LDC, porches, balconies, and stoops may encroach into a required street setback by up to ten feet or half the width of the required street setback, whichever is less, on the first living level of residential buildings, provided that any walls, screened areas, or railings within the setback zone extend no higher than 42 inches above the floor of the porch, balcony, or stoop. However, the proposed staircase is enclosed, located within the rear setback, and extends to the second floor. Therefore, the proposed staircase does not qualify for the setback encroachment provisions applicable to porches, balconies, and stoops and must comply with the required setback applicable to the principal structure.

The Applicant is therefore, requesting a variance from Table 34-3 of the Land Development Code (LDC) to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for an enclosed access staircase extending to the second floor of a proposed two-family residence within the Residential Conservation (RC) zoning district.

Neighborhood Compatibility:

The subject property is located within an established residential area consisting of both vacant and developed residential properties. While setback compliance cannot be confirmed solely through aerial imagery, a review of Lee County Property Appraiser GIS aerial imagery suggests that several nearby residential properties may contain non-conforming rear setbacks prior to Hurricane Ian.

As mentioned above, the subject property previously supported a duplex with non-conforming setbacks prior to Ian, and the proposed request makes the structure more compliant with Town's current code. Staff do not anticipate that granting the requested variance would be injurious to the neighborhood or otherwise detrimental to public welfare.

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 no exceptional or extraordinary conditions inherent to the subject property. While the subject property is an irregularly shaped lot, it is a conforming lot in the RC zoning district. The property previously contained a duplex with nonconforming setbacks prior to Hurricane Ian. The applicant is now proposing a new principal structure that generally complies with the Town's current setback requirements. The requested variance is specifically related to the design and placement of an enclosed access staircase extending into the required rear setback.

- 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.*

Staff finds that the conditions associated with the requested variance are the result of actions taken by the applicant after the adoption of the applicable setback regulations. The applicant proposes a new two-family residence with an enclosed staircase extending into the required rear setback. While the subject property previously contained a duplex with nonconforming setbacks prior to Hurricane Ian, the current request is associated with the design and placement of a newly proposed enclosed staircase and is not the result of conditions created by the Town's 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 requested variance is a result of design choice and Staff finds that alternative design configurations may exist that would allow the proposed development to comply with the required rear setback standards on this conforming lot, without the need for the requested variance.

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

As mentioned above, Granting the variance will not be injurious to the neighborhood or otherwise detrimental to 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 the 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 *Table 34-3 to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for an enclosed access staircase extending to the second floor of a proposed two-family residence within the Residential Conservation (RC) zoning district* and finds that the variance request does not meet the requirements set forth in Section 34-87.

Therefore, staff recommends **DENIAL** of VAR20250260, variance from *Table 34-3 to reduce the required 20-foot rear setback by 7.9 feet to allow a rear setback of 12.1 feet for the access staircase of a two-family structure located within the Residential Conservation (RC) zoning district*.

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 rear setback from the east property boundary for an enclosed access staircase associated with the proposed two-family dwellings as shown on the site plan provided. Demolition or substantial damage to the residential structure shall render the variance to be null and void.
3. This variance applies to the rear setback from the east side property boundary for the enclosed access staircase of a newly proposed two-family structure on the subject property only. Any additional modification of the two-family structure or additional construction on the subject property must comply with all applicable regulations or seek a new variance.
4. This variance applies to the modified rear setbacks as shown in "Exhibit A" only. No other portion of the two-family residence or accessory structure(s) may be extended into a required setback.

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

Yellow Sheet Number: **2026-577**

1. **Request:**

Meeting Date: June 16, 2026

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20260056, REQUESTING A VARIANCE FROM LDC SECTION 34-638(d)(3)c.3.(iii) TO REDUCE THE REQUIRED 25-FOOT WATERBODY SETBACK BY 8.97 FEET AND ALLOW A 16.03-FOOT WATERBODY SETBACK FOR A NON-ROOFED SWIMMING POOL FOR AN EXISTING SINGLE-FAMILY RESIDENCE IN THE RESIDENTIAL CONSERVATION (RC) FOR THE PROPERTY LOCATED AT 21531 WIDGEON TERRACE GENERALLY REFERRED TO AS STRAP NUMBER 34-46-24-W1-00001.001B IN FORT MYERS BEACH; 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 Local Planning Agency (LPA) may recommend the variance request to the Town Council or approve the request by unanimous vote.

What the action accomplishes:

The Local Planning Agency's recommendation shall be forwarded to the Town Council for consideration, unless it is approved by a unanimous vote, in which case it shall constitute final agency action.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

5. **Background:**

Kara Stewart, on behalf of CER Holdings LLC, the owner of the property located at 21531 Widgeon Terrace, is requesting a variance from Section 34-638(d)3.(iii) to reduce the required 25-foot waterbody setback by 8.97 feet and allow a 16.03-foot waterbody setback for a non-roofed swimming pool for an existing single-family residence in the Residential Conservation (RC) zoning district.

The subject property currently supports a single-family residence constructed in 1987. The subject property does not contain a seawall and abuts Estero Bay along the eastern property line, which constitutes as a non-sea walled natural body of water under the Land Development Code (LDC).

The applicant proposes construction of a new non-roofed swimming pool with a proposed waterbody setback of 16.03 feet from Estero Bay. LDC Section 34-638(d)(3)c.3.(iii) requires a minimum 25-foot setback from a non-seawalled natural body of water. Therefore, the applicant is requesting a variance from Section 34-638(d)3.(iii) to reduce the required 25-foot waterbody setback by 8.97 feet to allow a 16.03 feet waterbody setback from Estero Bay.

Attachments:

1. NS LPA Resolution XX VAR 20260056 21531 Widgeon Terrace
2. Exhibit A - Site Plan
3. Staff Report

Financial Impact:

Unknown

6. Alternative Action

Deny

7. Staff Recommendations:

Staff recommends APPROVAL WITH CONDITIONS for VAR20260056, a variance from Section 34-638(d)(3)c.3.(iii) to reduce the required 25-foot waterbody setback by 8.97 feet and allow a 16.03-foot waterbody setback for a non-roofed swimming pool for an existing single-family residence in the Residential Conservation (RC) zoning district.

8. Recommended Approval:

_____	Date: June 01, 2026
Kendra Rosa, Zoning Coordinator	
_____	Date: June 02, 2026
Georgina Cid, Community Development Manager	
_____	Date: June 02, 2026
Frankie Kropacek, Community Development Director	
_____	Date: June 09, 2026
nancy stuparich, Town Attorney	
_____	Date: June 09, 2026
Amy Baker, Town Clerk	

RESOLUTION NUMBER 2026-LPA-XX

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20260056, REQUESTING A VARIANCE FROM LDC SECTION 34-638(d)(3)c.3.(iii) TO REDUCE THE REQUIRED 25-FOOT WATERBODY SETBACK BY 8.97 FEET AND ALLOW A 16.03-FOOT WATERBODY SETBACK FOR A NON-ROOFED SWIMMING POOL FOR AN EXISTING SINGLE-FAMILY RESIDENCE IN THE RESIDENTIAL CONSERVATION (RC) FOR THE PROPERTY LOCATED AT 21531 WIDGEON TERRACE GENERALLY REFERRED TO AS STRAP NUMBER 34-46-24-W1-00001.001B IN FORT MYERS BEACH; 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 CER Holdings LLC ("Owner") of the property located at 21531 Widgeon Terrace ("Subject Property"), is requesting a variance from LDC Section 34-638(d)(3)c.3.(iii) to reduce the required 25-foot waterbody setback by 8.97 feet and allow a 16.03-foot waterbody setback for a non-roofed swimming pool for an existing single-family residence within the Residential Conservation (RC) zoning district; and

WHEREAS, the STRAP number for the Subject Property is 34-46-24-W1-00001.001B; and;

WHEREAS, the Subject Property is in the "Mixed Residential" 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, the RC zoning district requires a minimum lot width of 45 feet and a minimum lot depth of 80 feet, with a total lot area of 4,000 square feet; and

WHEREAS, the Subject Property is an irregularly shaped nonconforming lot within the RC zoning district, with widths ranging from approximately 27 feet to 39 feet and depths ranging from approximately 115 feet to 120 feet; and

WHEREAS, the Subject Property currently supports a single-family residence constructed in 1987; and

WHEREAS, the Subject Property does not contain a seawall and abuts Estero Bay along the eastern property line, which constitutes as a non-sea walled natural body of water under the Town's Land Development Code; and

WHEREAS, the applicant is proposing construction of a new non-roofed swimming pool with a proposed waterbody setback of 16.03 feet from Estero Bay; and

WHEREAS, LDC Section 34-638(d)(3)c.3.(iii) requires a minimum 25-foot waterbody setback from a non-seawalled natural body of water for all non-roofed accessory structures including swimming pools; and

WHEREAS, the Applicant is requesting a variance of 8.97 feet to allow a 16.03-foot waterbody setback for a non-roofed swimming pool of an existing single-family residence within the Residential Conservation (RC) zoning district; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on June 16, 2026, 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/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance are/are not the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted is/ is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance will/will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the 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.

WHEREAS, eligible members of the LPA voted ____ to ____ by roll call vote to approve/ approve with conditions/ deny the requested special exception with the following conditions:

1. Approval of this variance does not guarantee approval of any subsequent development permits. Development or redevelopment of the subject property must comply with all applicable provisions of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of permit approval, except as specifically modified by this variance.
2. The variance shall apply solely to the waterbody setback for the proposed non-roofed swimming pool and spa accessory structure associated with the existing single-family structure as shown on the site plan provided. Demolition or substantial damage to the residential structure shall render the variance to be null and void.
3. This variance applies to the waterbody setback from the east side property boundary for the non-roofed swimming pool of an existing single-family structure on the subject property only. Any additional modification of the single-family structure or additional construction on the subject property must comply with all applicable regulations or seek a new variance.
4. This variance applies only to the modified waterbody setback as shown in "Exhibit A". No other portion of the principal or accessory structures may encroach into any required setback unless otherwise approved by the Town.

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. VAR20260056, with the conditions contained herein, received/ did not receive unanimous approval from eligible voting members of the LPA on June 16, 2026.

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 LPA member ____ and seconded by LPA member _____ 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 Ed Schoonover	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS ____ day of ____, 2026.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

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

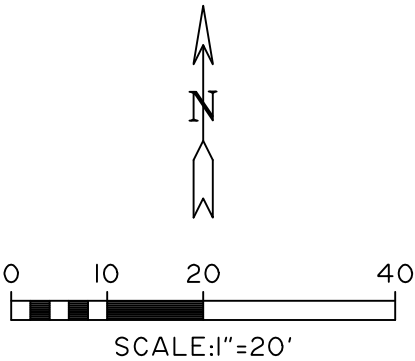
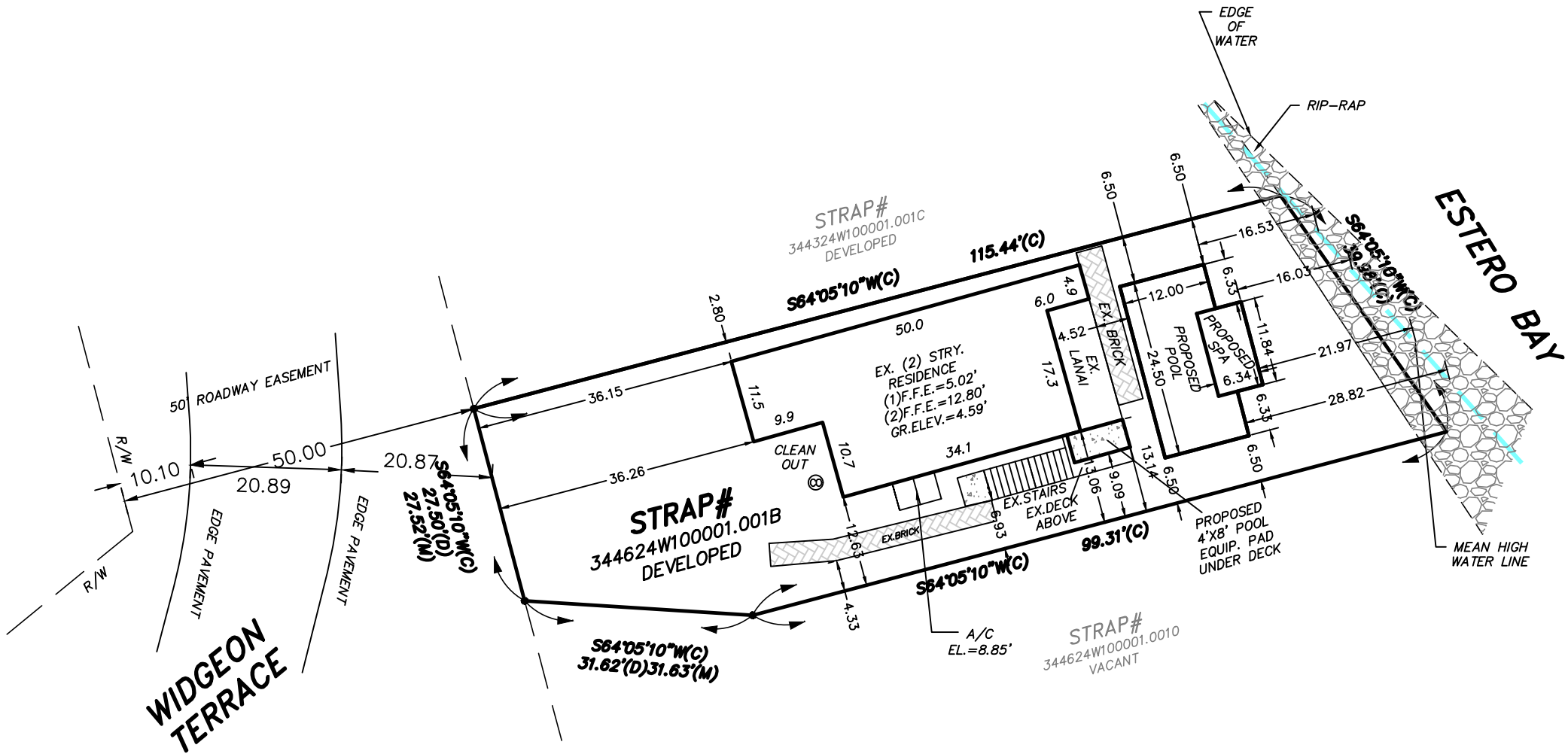
This Resolution was filed in the Office of the Town Clerk on this ____ day of ____, 2026.

Attachment:
Exhibit A: Site Plan

SITE ADDRESS:

21531 WIDGEON TER, FORT MYERS BEACH, FLORIDA, 33931

COMMUNITY / MAP NUMBER: 120673 / 12071C0567G DATE OF MAP: 11/17/2022 FLOOD ZONE: AE ELEVATION: 12.00' NAVD88



PROPOSED POOL SITE PLAN

DRAWN BY	CHRIS W.			
SCALE	1" = 20'			
JOB NO	21531 WIDGEON TER.			
SHEET: 1 OF 1	DATE:	04/27/2026		



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20260056

CASE NAME: 21531 Widgeon Terrace; a variance from LDC Section 34-638(d)3.(iii) to reduce the required 25-foot waterbody setback by 8.97 feet and allow a 16.03-foot waterbody setback for a non-roofed swimming pool for an existing single-family residence in the Residential Conservation (RC) zoning district.

LPA

HEARING DATE: June 16, 2026

STAFF

RECOMMENDATION: Approval with conditions

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

I. APPLICATION SUMMARY

Applicant/Owner: Kara Stewart/CER HOLDINGS LLC.

Request:

A variance from Section 34-638(d)3.(iii) to reduce the required 25-foot waterbody setback by 8.97 feet and allow a 16.03 feet waterbody setback for a non-roofed swimming pool for an existing single-family residence in the Residential Conservation (RC) zoning district.

Subject property: See attached site plan

Physical Address: 21531 Widgeon Terrace

STRAP #: 34-46-24-W1-00001.001B

FLU: Mixed Residential

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North:	Mixed Residential Residential Conservation ,RC
South:	Mixed Residential Residential Conservation, RC
East:	Tidal Water Estero Bay
West:	Mixed Residential Residential Conservation, RC

II. BACKGROUND AND ANALYSIS

Background:

Kara Stewart, on behalf of CER Holdings LLC, the owner of the property located at 21531 Widgeon Terrace, is requesting a variance from Section 34-638(d)3.(iii) to reduce the required 25-foot waterbody setback by 8.97 feet and allow a 16.03-foot waterbody setback for a non-roofed swimming pool for an existing single-family residence in the Residential Conservation (RC) zoning district.

The subject property currently supports a single-family residence constructed in 1987. The subject property does not contain a seawall and abuts Estero Bay along the eastern property line, which constitutes as a non-sea walled natural body of water under the Land Development Code (LDC).

The applicant proposes construction of a new non-roofed swimming pool with a proposed waterbody setback of 16.03 feet from Estero Bay. LDC Section 34-638(d)(3)c.3.(iii) requires a minimum 25-foot setback from a non-seawalled natural body of water. Therefore, the applicant is requesting a variance from Section 34-638(d)3.(iii) to reduce the required 25-foot waterbody setback by 8.97 feet to allow a 16.03 feet waterbody setback from Estero Bay.

Analysis:

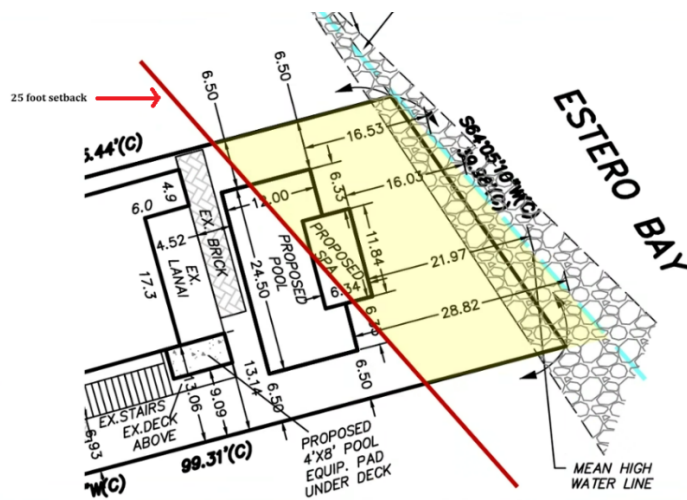
The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile homes purposes prior to incorporation of the Town. A conforming lot within the RC zoning district is required to have a minimum lot width of 45 feet, a minimum lot depth of 80 feet, and a minimum lot area of 4,000 square feet.

The subject property is an irregularly shaped nonconforming lot within the RC zoning district, with widths ranging from approximately 27 feet to 39 feet and depths ranging from approximately 115 feet to 120 feet.

Pursuant to Section 34-643 and Table 34-3 of the LDC, lots within the RC zoning district are required to have a 25-foot front setback, a 20-foot rear setback and side setbacks of 6.5 feet for lots less than 50 feet in width. The property currently supports a single-family residence built in 1987 with approximately 36.15 feet from the street setback from the west property line, 6.93 feet side setback from the southern property line, 2.80 feet side setback from the northern property line, and approximately 33.05 feet waterbody setback from Estero Bay along the eastern property line. The existing single-family residence has a non-compliant side setback from northern property line but complies with the Town's current waterbody setback requirements.

The applicant proposes construction of a new non-roofed swimming pool accessory structure serving the existing single-family residence in the RC zoning district with a side setback of 6.5 feet and a waterbody setback of 16.03 feet from Estero Bay. Pursuant to Section 34-638(d)(3)c.3.(iii) of the LDC, non-roofed accessory structures adjacent to a non-seawalled natural body of water are required to maintain a minimum setback of 25 feet from the waterbody.

Due to the irregular shape and limited width of the subject property, the buildable area located between the existing residence and the required 25-foot waterbody setback is significantly constrained. Compliance with the required waterbody setback would result in a limited and irregularly shaped area that substantially restricts the reasonable placement of a non-roofed swimming pool accessory structure, as illustrated on the submitted site plan, and image below. Therefore, the applicant is requesting a variance of 8.97 feet from the required 25-foot waterbody setback to allow the proposed non-roofed swimming pool and spa accessory structure to maintain a setback of 16.03 feet from Estero Bay.



Neighborhood Compatibility:

The subject property is part of an older residential neighborhood. While setback compliance cannot be confirmed solely through aerial imagery, a review of the surrounding neighborhood using Lee County Property Appraiser GIS aerial imagery indicates that several nearby waterfront residential properties support non-roofed accessory structures like swimming pools encroaching into the required 25 foot waterbody setback.

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 or extraordinary conditions and circumstances inherent to the subject property that justify the requested variance. The subject property is an irregularly shaped nonconforming waterfront lot with limited width and a constrained buildable area between the existing residence and the required 25-foot waterbody setback from Estero Bay. Strict application of the required waterbody setback would substantially limit the reasonable placement of a non-roofed swimming pool accessory structure on the property.

- 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 subject property is an existing irregularly shaped nonconforming waterfront lot with limited width and a constrained buildable area between the existing residence and the required waterbody setback. These conditions are inherent to the property and were not created 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 his property.*

The requested variance appears limited to the minimum relief necessary to accommodate a nonroofed swimming pool and spa accessory structure on the subject property given the existing development pattern, narrow lot width, and waterfront constraints of the site.

- 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 a variance of 8.97 feet from Section 34-638(d)(3)c.3.(iii)) to reduce the required 25-foot waterbody setback by 8.97 feet and allow a 16.03-foot waterbody setback for a non-roofed swimming pool for an existing single-family residence in the Residential Conservation (RC) zoning district., and find that the variance request generally meets the requirements set forth in Section 34-87 of the Land Development Code.

Therefore, staff recommends APPROVAL WITH CONDITIONS for VAR20260056, a variance from Section 34-638(d)(3)c.3.(iii) which requires nonroofed accessory structures adjacent to a nonseawalled natural body of water to have a minimum setback of 25 feet from the waterbody.

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 guarantee approval of any subsequent development permits. Development or redevelopment of the subject property must comply with all applicable provisions of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of permit approval, except as specifically modified by this variance.
2. The variance shall apply solely to the waterbody setback for the proposed non-roofed swimming pool and spa accessory structure associated with the existing single-family structure as shown on the site plan provided. Demolition or substantial damage to the residential structure shall render the variance to be null and void.
3. This variance applies to the waterbody setback from the east side property boundary for the non-roofed swimming pool of an existing single-family structure on the subject property only. Any additional modification of the

- single-family structure or additional construction on the subject property must comply with all applicable regulations or seek a new variance.
4. This variance applies only to the modified waterbody setback as shown in "Exhibit A". No other portion of the principal or accessory structures may encroach into any required setback unless otherwise approved by the Town.

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

Yellow Sheet Number: **2026-276**

1. Request:

Meeting Date: June 16, 2026

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING OR DENYING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 6890 ESTERO BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 03-47-24-W1-00003.0010 OWNED BY FMBH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH TWO PHASES AND SEVEN DEVIATIONS FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY TO ALLOW RESTAURANT, ENTERTAINMENT, COMMERCIAL PARKING AND RECREATIONAL AREA; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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:

LPA reviews the application to make recommendations for Town Council consideration.

What the action accomplishes:

LPA will make recommendations for Town Council consideration.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

5. Background:

The Neighborhood Company, on behalf of FMBH, LLC, is requesting approval of a Development Agreement with deviations for redevelopment of the former Wyndham/Holiday Inn property located at 6890 Estero Boulevard. The proposal includes a phased redevelopment consisting of a restaurant, open-air entertainment venue, recreation uses, accessory parking, and future joint parking operations.

- **Phase 1:** Open a restaurant and entertainment venue with recreational uses as quickly as possible. In order to expedite the opening of this venue, temporary mobile vending trailers will be utilized to comply with FEMA and Florida Building code flood regulations.
- **Phase 2:** This phase will require the design, permitting and construction of a wave dissipation wall combined with a flood map revision to change the property's flood zone from VE to AE. The map change will allow for construction of permanent dry flood-proofed structures that will replace and eliminate the use of temporary trailers. Additionally, the recreation uses will be expanded to include a pool and lazy river. The two phases are described in more detail below.

The underlying zoning for this property is Commercial Resort, which has housed hotels like Holiday Inn and Wyndham Garden since 1969. The property was severely damaged during the hurricane Ian in 2022. The owner of the property believes that the highest and best use for this property was and remains a resort hotel. However, the current conditions remain unfavorable financially to establish a resort hotel. As a result, the Development Agreement will allow limited uses outlined in Phase 1 and 2, (depicted in Exhibits C and D) of the agreement. However, the agreement also includes permitted uses under the current CR zoning district, including Commercial Resort, but those uses cannot be developed/constructed unless the Development

Agreement is amended or terminated.

Attachments:

1. Final NS Ordinance 26-02 DA 6890 Estero Blvd June LPA (4)
2. Exhibit A to DA Ordinance Draft Home Rule Development Agreement 5-21-26 (1)
3. Exhibit A to Draft Home Rule Development Agreement: Legal Description
4. Exhibit A1 to Draft Home Rule Development Agreement: Boundary Survey
5. Exhibit B to Draft Home Rule Development Agreement : Title Opnion
6. Exhibit C and D to Draft Home Rule Development Agreement: Site Plans 1 and 2
7. Exhibit B to DA Ordinance - Site Plans Phase 1 and 2
8. Exhibit C to DA Ordinance: Proposed Deviations
9. Exhibit D to DA Ordinance: Condition for Approval
10. Outstanding Issues for Discussion by LPA and TC
11. DA6890 Estero Blvd-Staff Report June LPA

Financial Impact:

None

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

_____	Date: June 02, 2026
Georgina Cid, Community Development Manager	
_____	Date: June 02, 2026
Frankie Kropacek, Community Development Director	
_____	Date: June 09, 2026
nancy stuparich, Town Attorney	
_____	Date: June 09, 2026
Amy Baker, Town Clerk	

ORDINANCE NO. 26-02
(Old Wyndham Garden Home Rule Development Agreement)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING OR DENYING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 6890 ESTERO BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 03-47-24-W1-00003.0010 OWNED BY FMBH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH TWO PHASES AND SEVEN DEVIATIONS FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY TO ALLOW RESTAURANT, ENTERTAINMENT, COMMERCIAL PARKING AND RECREATIONAL AREA; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the property owner, FMBH LLC, through its agent The Neighborhood Company (the "Applicant"), wishes to develop certain parcels of land in the Town of Fort Myers Beach, as more explicitly described in the Home Rule Development Agreement, attached hereto as Exhibit "A" (the "Development Agreement"); and

WHEREAS, the Property historically operated as the Holiday Inn and Wyndham Garden resort hotel and sustained substantial storm damage during Hurricane Ian in 2022; and

WHEREAS, the proposed Development Agreement allows phased redevelopment of the Property, while preserving the underlying Commercial Resort zoning and future redevelopment rights for a resort hotel use; and

WHEREAS, Phase 1 of the proposed redevelopment includes temporary mobile food vendor trailers, outdoor restaurant and entertainment uses, recreational uses, accessory parking, public beach access improvements, and associated site improvements; and

WHEREAS, Phase 2 includes construction of a wave dissipation wall, replacement of temporary trailers with permanent flood-compliant restaurant structures, expansion of recreational amenities, and shared/joint parking operations; and

WHEREAS, the Development Agreement includes seven (7) requested deviations from the Town Land Development Code related to parking surface materials, landscaping, buffering, parking stall delineation, internal landscaping standards, and shared parking operations; and

WHEREAS, following several meetings with Town Staff as provided in Resolution 24-247, the Applicant presented a Development Agreement to the Town's Local Planning Agency ("LPA") at its June 16, 2026 meeting and the LPA voted to recommend approval of the Development Agreement by a vote of __ to __, inclusive of a finding of consistency between the Development Agreement and the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS, the Town Council held its first reading and public hearing of Ordinance 26-02 containing the Development Agreement at its __ __, 2026 Town Council meeting, during which the Town Council determined that the Development Agreement and the accompanying application **satisfied** the guidelines and criteria set forth in Sections 2-100 and 2-96 of the Town's Code of Ordinances and the procedures for approval of development agreements; and

WHEREAS, the Town Council approved scheduling a second reading and adoption public hearing on __ __, 2026 regarding Ordinance 26-02 and the second public hearing was advertised on the __ day of __, 2026 in the News-Press; and

WHEREAS, thereafter the Town Council held the second and final reading and public hearing to adopt Ordinance 26-02, containing the Development Agreement on __ __, 2026 and voted to **approve** the Development Agreement __ to __; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town's website on the __ of __, 2026, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, the Town Council determined that adoption of the ordinance, as provided herein is in the best interests of the health, safety, welfare, and morals of the Town's residents.

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

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

Section 2. The Town Council hereby formally approves the Development Agreement attached hereto as Exhibit "A"; Site Plan (phase 1 and 2) in Exhibit "B" with the seven Deviations

identified in Exhibit “C” and Conditions for Approval identified in Exhibit “D to Ordinance 26-02 and authorizes the Applicant to proceed with the development as further outlined therein.

Section 3. The Town Clerk is directed to record a copy of the Home Rule Development Agreement in the Official Records of Lee County, Florida.

Section 4. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon motion by _____ and _____, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor _____
Scott Safford, Vice Mayor _____
John R. King, Council Member _____
Rebecca Link, Council Member _____
John McLean, Council Member _____

ADOPTED this ____ day of _____, 2026 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Town 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 Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2026.

Attachments:

Exhibit A: Home Rule Development Agreement

Exhibit B: Site Plan for Phase 1 and 2

Exhibit C: Proposed Deviations

Exhibit D: Conditions for Approval

DRAFT

EXHIBIT A: Home Rule Development

Agreement

6890 ESTERO BLVD, FORT MYERS BEACH HOME RULE DEVELOPMENT AGREEMENT

(Draft 05/21/2026)

THIS DEVELOPMENT AGREEMENT (hereinafter, "Agreement" or "Development Agreement") is entered into this ___ day of _____, 2026, by and between **THE TOWN OF FORT MYERS BEACH, FLORIDA**, a municipality of the State of Florida (hereinafter "Town"), having its principal office at 6231 Estero Boulevard, Fort Myers Beach, FL, and **FMBH LLC**, a Florida Limited Liability Company (hereinafter "Developer"), whose address is 4100 Corporate Square, Suite 155, Naples FL 34104.

WHEREAS, Section 2-100 of the Town's Land Development Code, authorizes it to enter into a home rule development agreement pursuant to article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166 and 380, and specifically recognized by the State Legislature in F.S. § 163.3220(5); and

WHEREAS, the Developer has requested approval of this Development Agreement pursuant to Section 2-96 of the Town's Land Development Code and Resolution 24-247, as amended; and

WHEREAS, Developer owns approximately 11.19+/- acres of land located within the Town, said property, said property, of which 3.79+/- acres are located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "A" and boundary survey in Exhibit A1 attached hereto (hereinafter, "the Property") and; and

WHEREAS, the Town and the Developer desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the development parameters consistent with the Town's Land Development Code and Comprehensive Plan as set forth herein; and

WHEREAS, prior to the public hearing held before the Town of Fort Myers Beach Local Planning Agency ("LPA") on the _____ day of _____, 2026, notice was provided pursuant to Sections 2-98 and 34-236 of the Town's Land Development Code and consistent with Florida Statute Section 163.3225, and the LPA reviewed the request and by a vote of ___ recommended ___ to the Town Council; and

WHEREAS, the Town conducted two public hearings on the _____ day of _____, 2026, and the _____ day of _____, 2026, prior to entering into this Agreement, both of which were properly noticed pursuant to Section 34-236 of the Town's Land Development Code and consistent with Florida Statute Sections 163.3225 and 166.041; and

WHEREAS, the Town Council has determined after consideration of the recommendation of the LPA, Town staff, and following two public hearings, which provided an opportunity for comment, testimony and evidence from the Developer, Town staff, and the public, the Town Council has determined that based upon competent and substantive evidence the Development Agreement is reasonable and not arbitrary and in the best interest of the Town and the residents of the Town Fort Myers Beach.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, for the purposes set forth in Section 2-100 and 2-96 of the Town's Land Development Code, the benefits to accrue to each party, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Town and the Developer agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference. All exhibits to this Agreement are deemed a part hereof.
2. Property Subject to this Agreement. The real property described in Exhibit "A" and Exhibit "A1" ("Property"), is subject to the terms and conditions of this Development Agreement ("Agreement").
3. Ownership. Developer represents that it is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 5295143 recorded November 20th, 2001, in the Official Records of Lee County, Florida, and as such may lawfully enter into this Agreement. The Town is in receipt of a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Developer's ownership representation as an Exhibit B.
4. Phased Development. This Agreement is for a phased development project. The Property will retain the underlying entitlements under the existing zoning, Commercial Resort (CR) and designation, Mixed Residential, pursuant to the Town's Land Development Code and Comprehensive Plan. This Agreement allows for the Property to be developed with a restaurant, open-air entertainment venue and accessory amenities, as discussed further below. This use is requested as recognition that there is immediate need and demand for food and entertainment venues on the south end of Fort Myers Beach, that redevelopment of the island will be an extended process, and that long-term the highest and best use of the property remains a commercial resort. The uses of the Property shall be governed by the corresponding Development Agreement Site Plans, attached as Exhibits C and D. Any additional use or configuration will require a new Development Agreement Site Plan.
5. Proposed Development and Use of Property. The subject property contains 11.19 acres ($\pm 487,436$ square feet), more or less. The developable portion of the property encompasses 3.79 acres ($\pm 165,092$ SF) located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"). The development concept is for a restaurant and open-air family entertainment venue. Redevelopment of the subject property is proposed in two (2) Phases:
 - Phase 1: The intent of the first phase is to open a restaurant and entertainment venue on the Property as quickly as possible. In order to expedite the opening of this venue, temporary mobile vending trailers will be utilized to comply with FEMA and Florida Building Code flood regulations.
 - Phase 2: This phase will require the design, permitting and construction of a wave dissipation wall combined with a flood map revision to change the property's flood zone from VE to AE. The map change will allow for construction of permanent dry flood-proofed structures that will replace and eliminate the use of temporary trailers. Additionally, the recreation uses will be expanded to include a pool and lazy river. The two phases are described in more detail below.
6. Phase 1: The mobile vending and entertainment venue, will include the following principal commercial uses: a restaurant, bar and entertainment area provided via mobile vending/trailers and a tiki/pole barn structure (See paragraph 6.B) as depicted on the enclosed Development Agreement Site Plan: Phase 1 (Exhibit "C"). Accessory uses will include, but are not limited to a parking lot, retail vending, outdoor seating,

recreation area, and restrooms/comfort stations.

- A. Mobile Vending/Entertainment Area: All mobile vending trailers and the tiki/pole barn structure will be located on a compacted subgrade area with pavers and mountable curbs, which will be a maximum of 13,000 square feet. A maximum of six mobile trailers will be allowed, including the following: mobile restaurant/food service trailer, mobile bar/beverage station trailer, walk-in freezer trailer, walk-in cooler trailer, dry storage trailer and a mobile restrooms/comfort station trailer. All trailers will comply with Town and FEMA requirements and at a minimum will be:
- Licensed and registered in accordance with state and local requirements,
 - Removable within four (4) hours of a hurricane watch, and
 - Towable by a light-duty vehicle or self-propelled.
- B. Tiki/Pole Barn Structure: A tiki/pole barn structure, not to exceed 11,200 square feet, will provide covered outdoor seating, and space for live entertainment and dancing. All required permits through the Town of Fort Myers Beach, and other required permitting authorities will be obtained prior to constructing the structure in accordance with the following:
- Height: The tiki structure will comply with the maximum height of 30 feet as allowed in the underlying Commercial Resort (CR) zoning district.
 - Setbacks: The tiki structure will exceed LDC-required setbacks and at a minimum will be located 200 feet from Estero Boulevard, 100 feet from the northern boundary and 200 feet from the southern boundary.
- C. Recreation Area: The site will contain an accessory recreation area no larger than 19,000 square feet as depicted in Exhibit "C". This area may contain, but is not limited to, the following uses: beach chair seating; picnic tables; rental of beach chairs, umbrellas, cabanas and beach accessories; parasailing and personal watercraft vending; and outdoor games such as beach volleyball, cornhole and bocce ball. This recreation area does not prohibit the property owner or designee(s) from operating a chair rental and/or personal watercraft/watersport vending business on the portion of the beach outside the Recreation Area, as may be allowed by Town permits.
- D. Consumption of Premises (COP). Outdoor service and consumption on premises will be limited to the Mobile Vending/Entertainment Area and Recreation Area as depicted in Exhibit "C". The COP boundary will be delineated by ropes and bollards and will encompass a maximum of 32,000 square feet. A portion of the COP area can extend into the EC zoning district but cannot extend any further than 30' seaward of the 1978 CCCL and cannot be any wider than 121' as previously approved by Special Exception COP2012-0007.
- E. Parking. The Mobile Vending/Entertainment and Recreation Areas will require 144 parking spaces. 163 vehicle parking spaces are provided as well as 5 golf cart parking spaces. The parking lot is accessory to the principal uses and can be offered as paid or unpaid parking.

- Controlled Access: Vehicular access to the parking lot will be managed and monitored by a parking lot attendant. After regular hours of operation, access will be restricted by bollards and chains.
- Parking surface: Consistent with the low turn-over parking and the deviation request below, the parking surface can consist of stabilized gravel, lime rock, or crushed shell.
- Parking Internal Landscape: Landscaping internal to the parking lot will be consistent with Exhibit "C" and a deviation from LDC Section 10-416(c)(2) presented below. Internal landscaping will be limited to terminal islands at the end of parking aisles and perimeter landscaping. The terminal islands will be comprised of bushes and mulched planting beds.
- Parking Space Delineation: Individual parking spaces will be delineated with ropes and bollards. The ropes will be painted to identify each parking stall meeting minimum stall widths identified in LDC Section 34-2016. A deviation for this delineation method is included below.
- Lighting: Permanent code-compliant lighting will be installed as part of Phase 1. A detailed lighting plan and required photometrics will be provided at development order stage. Additional lighting may be needed for the southern parking area. If so, it will be installed as part of Phase 2 and will meet all lighting requirements.

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7. Phase 2: The restaurant, open-air entertainment and recreation venue will include the following primary commercial uses: a restaurant, bar and entertainment area provided via a two-story pole barn/tiki structure (See paragraph 4.B) and as depicted on the enclosed Development Agreement Site Plan: Phase 2 (Exhibit "D"). Accessory uses will include, but are not limited to a parking lot, retail vending, outdoor seating, recreation area, and restrooms.
- A. Restaurant/Entertainment Area: All mobile vending trailers will be eliminated from Phase 2 and a permanent restaurant with bar will be constructed within the existing tiki/pole barn structure. The enclosed restaurant will be a maximum of 5,000 square feet and the accessory bar area will not exceed 1,500 square feet. The reconfigured Restaurant/Entertainment Area will not exceed 11,500 square feet.
 - B. Tiki/Pole Barn Structure: As part of Phase 2 the existing tiki/pole barn structure will be modified to incorporate a permanent restaurant and bar area. However, the size, location and configuration of the tiki/pole barn structure will remain the same.
 - C. Restrooms/Comfort Stations: The mobile bathrooms/comfort station trailer will be eliminated in Phase 2 and will be replaced by permanent ground level restrooms/comfort stations meeting all building code requirements. The restrooms/comfort station facilities will be open to the general public during stand hours of operation.
 - D. Recreation Area: As part of Phase 2, the size of the recreation area will increase slightly to a maximum of 21,500 square feet and will be modified to include a pool and lazy river as depicted in Exhibit "D". Allowed accessory uses outlined in Phase 1 will be expanded to include the pool and lazy river.
 - E. Consumption on Premises (COP): Outdoor service and consumption on premises will be limited to the Restaurant/Entertainment Area and Recreation Area as depicted in Exhibit "D". The COP boundary will be delineated by ropes and bollards and will encompass a maximum of 33,000 square feet. A portion of the COP area can extend into the EC zoning district but cannot extend any further than 30' seaward of the 1978 CCCL and cannot be any wider than 121' as previously approved by Special Exception COP2012-0007.

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F. Parking. The required parking for the Restaurant/Entertainment and Recreation Areas will increase slightly to 147 spaces. However, in Phase 2, the parking lot will be modified to meet LDC internal landscaping requirements or landscape requirements as allowed via an alternative landscape betterment plan. The parking lot will also be expanded to provide an additional parking area along the southern portion of the property. This additional parking will address potential overflow parking needs and provide a restricted-access joint parking area as described below. Phase 2 will provide a total of ±237 parking spaces and 10 golf cart spaces.

1. Controlled Access. Vehicular access to the parking lot will be managed and monitored by a parking lot attendant and/or via ticketing booths and automated gates. After regular hours of operation, access will be restricted by gates.
2. Parking surface: Consistent with the low turn-over parking and the deviation request below, the parking surface can consist of stabilized gravel, lime rock, or crushed shell.
3. Parking Internal Landscape: Will be consistent LDC Section 10-416(c)(2) or as otherwise allowed via an alternative landscape betterment plan.
4. Parking Space Delineation: Individual parking spaces will be delineated with wheel stops.
5. Lighting: Additional lighting improvements needed for Phase 2 will meet all LDC requirements.
6. Joint Parking Area: The joint parking area will be secure, gated and when in use as a joint parking area will be accessed by authorized personnel only and will be allowed to operate in the evening and overnight. All vehicles within the joint parking area will need to be identified by a valid parking pass from a hotel or restaurant participating in a joint parking agreement.

8. Vehicular Access: The site will be accessible through a maximum of two access points. As depicted in Exhibit "C" & "D", the northern access point will allow ingress and egress movements, whereas the southern access point will be egress only. Depending on seasonality and parking demand, one or both access points may be utilized at the discretion of the owner/operator.
9. Other Permitted Use: Other permitted uses of the land will be those allowed in the underlying CR zoning district, as further discussed in section 30 below. Any additional uses or increase in intensity will require an amendment to this Agreement.

BALANCE OF THE PAGE LEFT PURPOSELY BLANK

10. Duration of Each Phase: Uses granted via this Agreement and outlined above shall continue until developer takes action inconsistent with this Agreement, seeks an amendment, or terminates this Agreement as discussed in Section 21 herein.
- Phase 1: The Developer must apply for a Development Order (DO) or Limited Development Order (LDO) or LDO Amendment for Phase 1 within 90 days of the effective date. Within 90 days of DO or LDO approval the Applicant will submit for building permits. In the event no building permits are applied for by the Developer within 90 days of the DO or LDO approval, the Agreement will terminate. Construction activities must be completed within 1 year of building permit issuance.
 - Phase 2: This phase is contingent upon approval and construction of a wave dissipation wall followed by a flood map revision from VE to AE. This process will most likely take 18-24 months. The Developer must commence permitting of the wave dissipation wall within 120 days of the effective date. Construction activities for the wave dissipation wall must begin within 90 days of final permitting approval. Construction of the permanent restaurant, bar and restrooms/comfort stations will commence once the map revision has been approved and must be completed within 1 year of commencement. Once constructed, mobile operations shall cease.
11. Public Facilities. The following public facilities will serve the Proposed Development:
- A. Potable Water: Potable water will be supplied by the Town of Fort Myers Beach and is presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on its availability at the time of submission of a Development Order.
 - B. Sanitary Sewer: Wastewater services will be provided by Lee County, which are presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a Development Order.
 - C. Solid Waste: Developer will coordinate solid waste services with Lee County, the Town, or a third-party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a building permit.
 - D. Drainage: Drainage will be in accordance with the applicable permits to be issued by the Town of Fort Myers Beach.
 - E. Fire and Rescue: Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. It is the responsibility of the developer to verify the adequacy of service available from the designated entities at the time of submission of a Development Order.

Developer agrees to pay any legally imposed impact fees and/or proportionate fair share contributions for necessary utility infrastructure and services necessitated by the redevelopment of the subject property.

12. Environmentally Sensitive Land. No structures will be erected within the EC-zoned portion of the property (i.e. seaward of the 1978 CCCL). However, limited recreational, outdoor seating and COP uses will be allowed within a 30' x 121' area depicted in Exhibits C and D.
13. Threatened and Endangered Species. There are no threatened or endangered species on the developable portion of the property (i.e. landward of the 1978 CCCL).
14. Conflicts. Any conflict between the matters set forth in this paragraph and other paragraphs in this Agreement will be resolved in favor of the terms and conditions in this paragraph. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control will be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction will not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions. Any matter or action required under existing ordinances of the town will not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended ("Deviations").
15. Development Permits Needed for Proposed Development. A list of all known governmental permits that may be needed for the Proposed Development is set forth below:
 - A. Town of Fort Myers Beach Development Order
 - B. Town of Fort Myers Beach Building Permit
 - C. South Florida Water Management District Environmental Resource Permit
 - D. FDEP Wastewater Permit
 - E. FDEP Coastal Construction Permit(s)
 - F. LCDOH Potable Water Permit
 - G. FEMA Flood Map Revision

The failure of this Agreement to address a particular permit, condition, term or restriction will not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer will be responsible at its sole cost for obtaining any required approval and will not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuance of its terms or any rights accruing to the Developer will not vest any development right in the Developer or the project to a continuation of this Agreement.

16. Developer Commitments and Conditions of Approval. For and in consideration of the benefits received pursuant to this agreement, the Developer agrees to the following commitments, obligations, and associated public benefits, which are deemed to be in the public interest.
 - A. Public Beach Access. In Phase 1 of this project, and at no cost to the Town, the Developer will construct a 10-foot-wide multi-use pathway, from Estero Boulevard to the beach, along the northern property line as depicted in Exhibit "C".
 - B. Public Restrooms/Comfort Stations. In Phase 1 and at no cost to the Town, the Developer will provide mobile restrooms/comfort stations which will be available to the commercial use patrons and general public. In Phase 2, permanent at-grade restrooms/comfort stations will be constructed and will

replace the trailer facilities. The permanent restrooms/comfort stations will remain available to patrons and the general public.

- C. Limited Commercial Uses. For the duration of this Development Agreement, the Developer voluntarily limits development to the uses and intensities identified herein.
- D. Maintaining View Corridors. The limited uses outlined in this agreement and depicted in Exhibits C and D will provide and maintain viewsheds/view corridors of the beach, gulf and open sky.
- E. Florida Friendly Landscaping. Required landscaping for this development will use Florida Friendly plantings that are salt and drought resistant and require little or no irrigation.
- F. Hours of Operation. The Developer will voluntarily limit hours of operation for the restaurant/entertainment area and accessory recreation area from 7AM to 9PM. Notwithstanding the joint parking area, parking operations will also be limited to 7 AM to 9 PM.
- G. Amplified Sound. Amplified sound for the restaurant/entertainment and recreation areas as depicted in Exhibit "C" and "D" will be allowed from 10 AM to 9 PM. Live music will be allowed within the tiki/pole barn structure only and all sound will be direct toward the beach and gulf.
- H. Turtle Compliant Lighting. All lighting on site will be compliant with turtle protection requirements from the Town of Fort Myers Beach.
- I. Bike Parking. The Developer will provide a minimum of 3 bike racks or twelve bike parking spaces.
- J. Golf Cart Parking. As part of Phase 1, a minimum of five golf cart parking spaces will be provided. As part of Phase 2, a minimum of 10 golf cart parking spaces will be provided.
- K. Improved Stormwater Management. This project will be required to obtain an Environmental Resource Permit which will ensure that all storm water will be stored and treated onsite.
- L. Emergency Vehicle Access to the Beach. This site has been designed to provide emergency vehicles with easy access to the beach via the 10' multi-use path which will include 10' of stabilized subgrade directly abutting the pathway.
- M. Post-Hurricane Staging and Recovery. In the advent of a major storm, the applicant shall allow the Town and other emergency management entities to stage operations in the parking lot. Moreover, this site provides easy access to the beach, and the Phase 1 configuration can easily accommodate food trucks and mobile food services to aid in recovery efforts.
- N. Proposed Uses. The proposed restaurant, entertainment, recreation and joint parking uses fulfill a significant demand on the south end of the island and will benefit residents, visitors, other local businesses and Town's overall recovery. Additionally, the proposed uses in conjunction with the public beach access and public restrooms help "democratize" the beach and promote a fun and relaxed beach/island vibe that is desired.
- O. Positive Economic Impact. The proposed project will take unproductive vacant property and turn it into an economically productive asset that will create direct and indirect economic impacts to the town including ad-valorem taxes, sales tax, employment, and secondary impacts to other island businesses.
- P. Wave Dissipation Wall. Phase 2 of the project will include the construction of a wave dissipation wall. This wall will protect the subject property and properties to the east of it. It represents a significant infrastructure investment that contributes to improving resiliency for all of Fort Myers Beach.

17. Deviations. The following deviations are granted pursuant to this Agreement in compliance with the Comprehensive Plan, and found to achieve the objectives of the proposed development, benefit the public interest, and preserve and promote the public health, safety and welfare:

1. Deviation From LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow a stabilized gravel/lime rock/crushed shell parking surface.
2. Deviation from LDC Section 10-416(c)(2)d, which requires that no more than an average of ten parking spaces can occur without a landscape island, to allow internal landscaping as depicted in Exhibit "C". This deviation applies to Phase 1 only. Phase 2 will comply with requirements of this code section.
3. Deviation from LDC Section 10-416(d)(2) table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement, to allow for a minimum 10-foot-wide Type D buffer.
4. Deviation from LDC Section 10-416(d)(2) table 10-8, which requires a 15-foot-wide Type C buffer or a 30-foot-wide Type F buffer when a commercial use abuts a multi-family residential use, to allow for a 20-foot-wide Type F with a chain link fence.
5. Deviation from LDC Section 34-2016(4) which requires individual parking stalls to be delineated with parking blocks (aka wheel stops) to allow a rope and bollard system where 8.5' rope segments are painted white to delineate the width of individual parking stalls. This deviation applies to Phase 1 only. Phase 2 will comply with this code section.
6. Deviation from LDC Section 10-416(c) which requires internal landscaping including landscape island frequency, ground cover material and dimensions to limit landscape islands to terminal islands at the end of drive aisles and allow them to be comprised of hedges in combination with mulch as groundcover. This deviation applies to Phase 1 only. Phase 2 will comply with this code section.
7. LDC Section 34-2018 which allows the joint use of parking lots for unrelated businesses within 750', to allow the joint use parking area for any business on the island with valet parking. This deviation applies to Phase 2 only.

BALANCE OF THE PAGE LEFT PURPOSELY BLANK

18. Consistency with the Comprehensive Plan and Land Development Code. The Proposed Development outlined in this Agreement is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code. The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the Property that is the subject of this Agreement. This Agreement has been reviewed and approved by the Town in a manner consistent with the procedures required of a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan as outlined in Resolution 24-247. Notwithstanding the foregoing, the deviations identified in paragraph 17 are approved.
19. Existing Ordinances. Any matter or thing required to be performed under existing ordinances of the Town will not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for herein.
20. Post Development Agreement Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:
- A. All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities will have been approved by the Town; and
 - B. The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town will have been approved by the town; and
 - C. All other town requirements necessary for the initial building permits to build the proposed project on the Land.
 - D. The Town will not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the Town's requirements as to any Post-Development Agreement requirements.

BALANCE OF THE PAGE LEFT PURPOSELY BLANK

21. Amendment and Termination.

- A. This Agreement may be amended or terminated with the Parties' mutual consent, in writing signed by both Parties.
- B. This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include new permitted uses, increased building intensity, density, and height. Substantial deviation from the approved Site Plans will require approval by Town Council. Substantial deviation include, but are not limited to, negative external impacts to adjacent properties.
- C. At Developer's option, Developer may terminate this Agreement at any time prior to the issuance by the Town of a building permit for any portion of the Proposed Development of the Property. Notwithstanding the foregoing, in the event of termination, Developer will not leave any improvements in an unsafe condition.
- D. Upon completion of construction contemplated in this Agreement, should developer submit a development order and/or building permit to construct a resort, in compliance with the regulations in the Town's Land Development Code and further stated herein, such an application will terminate this Agreement. The Property will be governed by the Town's Land Development Code as stated in Section 30 below, or in compliance with the Land Development Code in existence at the time of application, whichever is greater. As such, the property owner and developer retains the right to build a commercial resort consistent with the Land Development Code and 2045 Comprehensive Plan through the development order and/or building permit process without the need for a public hearing. However, any future proposed development of a commercial resort not in compliance with the existing regulations shall require an amendment of this Agreement before Town Council. Alternatively, this Agreement shall terminate upon the approval of a rezoning application submitted by the property owner.

22. Notices. All notices required or permitted under this Agreement will be in writing and will be mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer: John Callis
 FMBH, LLC
 4100 Corporate Square, Suite 155
 Naples, FL 34104

If to the Town: Town Manager

with a copy to: Town Attorney

23. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period will be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period of time reasonably required to complete such cure.
24. Governing Law. This Agreement will be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement will be exclusively in Lee County, Florida.
25. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees will be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event will the Town be liable for payment of the Developer's attorney fees.
26. Post Development Agreement Liability. The parties acknowledge that the Town will not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.
27. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement will not be affected or impaired, each remaining provision will remain in full force and effect, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
28. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement will supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.
29. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement are subject to the temporal limits within this agreement and bind the Developer's successors and assigns to the covenants as set forth in this Agreement and will be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or, property owners associations, and the Developer will thereafter be relieved of all obligations hereunder.

30. Existing Entitlements. Prior to adoption of this Agreement, the Town adopted a new Comprehensive Plan, "Town of Fort Myers Beach 2045 Comprehensive Plan," however, as of date of this application, the Town has not amended the Land Development Code to coincide with the new Comprehensive Plan. The Parties acknowledge the new Comprehensive Plan applies to the Property as well as the Land Development Code in effect as of April 2026. However, given the inconsistencies between the Land Development Code and the new Comprehensive Plan, it is important to memorialize the regulations of the Property at time of this Agreement.

The Property is currently zoned Commercial Resort which permits the following uses pursuant to Section 34-622 of the Town's Land Development Code:

A. Permitted by Right:

- i. Bed-and Breakfast Inn
- ii. Hotel/Motel
- iii. Rental of any permitted dwelling unit for period of one day or longer;
- iv. Resort
- v. Timeshare Units
- vi. Health care facility
- vii. Offices general or medical
- viii. Personal Services
- ix. Dwelling unit, whether single family or multiple-family
- x. Rooming house.

B. Accessory Uses:

- i. On-premise consumption of alcoholic beverages
- ii. Resort accessory uses
- iii. Personal services
- iv. Subordinate commercial uses
- v. Recreation facility private on-site
- vi. Rental of beach furniture. (when accessory to multi-family residential building near Gulf of Mexico with more than fifty dwelling units).
- vii. ATM

A. Permitted by Right:

- i. Bed-and Breakfast Inn
- ii. Hotel/Motel
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- iv. Resort
- v. Timeshare Units
- vi. Health care facility
- vii. Offices general or medical
- viii. Personal Services
- ix. Dwelling unit, whether single family or multiple-family
- x. Rooming house.

B. Accessory Uses:

- i. On-premise consumption of alcoholic beverages
- ii. Resort accessory uses
- iii. Personal services
- iv. Subordinate commercial uses
- v. Recreation facility private on-site
- vi. Rental of beach furniture. (when accessory to multi-family residential building near Gulf of Mexico with more than fifty dwelling units).
- vii. ATM

The Town's 2045 Comprehensive Plan and corresponding Future Land Use Map designate the Property as Medium Residential within the Santini Village Mixed-Use District. Policy FLU-1-B-2c5(e) provides the maximum non-residential FAR is 2.5 and the maximum density is up to six (6) dwelling units per acre.

The Property is subject to the following development regulations pursuant to Town's Land Development Code Section 34-645 and table 34-3:

SETBACKS	Street	10 feet
	Side	Waterfront lot: 20 feet
	Rear	20 feet
	Gulf	50 feet
Lot Size	Area	20,000 sq feet
	Width	100 feet
	Depth	100 feet
Building Coverage		40%
Residential Density		6 units per acre
Floor Area Ratio (FAR)		1.2
Building Height		30 feet or 3 stories

The Town's Land Development Code and 2045 Comprehensive Plan evaluate transient units differently. Under the Town's 2045 Comprehensive Plan, Transient Units are evaluated using FAR calculations, as discussed above. Conversely, under the Land Development Code, Section 34-1803, hotel/motel intensity is calculated using equivalency factors based on the future land use designation of the property and size of the units. Pursuant to this section, the equivalency factors for Mixed Residential ¹ range from 1.0 to 2.0. Prior to Hurricane Ian, the Property included a Commercial Resort with 103 units in buildings two-story in height. This intensity is consistent with the Town's 2045 Comprehensive Plan and the Town's Land Development Code which permits Commercial Resort to have an FAR not to exceed 1.2.

31. Effective Date and Duration. This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of Lee County pursuant to paragraph 32 below. The Developer must apply for a development order for at least a portion of the development contemplated herein within 90 days of the effective date. In the event no building permits are applied for by the Developer within a year of the effective date, the Agreement will terminate. Permitting and Construction activities must be completed as outlined in paragraph 10 above.
32. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.
33. Representation and Warranties. The parties make the following representations to each other as stated herein:
 - A. The execution, delivery and performance of this Agreement by the Developer and a third party will not violate any law, or the terms of any agreement by which they are bound.
 - B. The Town and Developer have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.
 - C. This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

FMBH, LLC, a Florida limited liability company

Witness: _____

Print Name: _____

Address: _____ Title: _____

City/State: _____

Witness: _____ (Corporate Seal)

Print Name: _____

Address: _____

City/State: _____

**STATE OF FLORIDA
COUNTY OF LEE**

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgments, personally appeared _____ to me known to be _____ and that he acknowledged executing the same, freely and voluntarily, and who [] is personally known to me, or [] produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this

_____ day of _____, 2026.

(NOTARY SEAL)

Signature of Notary

Print Name: _____

ATTEST:

TOWN OF FORT MYERS BEACH,

FLORIDA, a Florida municipal corporation

Amy Baker, Town Clerk

Dan Allers, Town Manager

**Approved as to form and legality
for use and reliance only by the
Town of Fort Myers Beach,
Florida:**

Vose Law Firm, Town Attorney

Exhibits:

- A. Legal Description and
- A1: Boundary Survey
- B. Title Opinion
- C. Development Agreement Site Plan: Phase 1
- D. Development Agreement Site Plan: Phase 2

EXHIBIT A to DA : Legal Description of Subject Property

LEGAL DESCRIPTION

(PER O.R. BOOK 3452, PAGE 350)

(6890 Estero Boulevard)

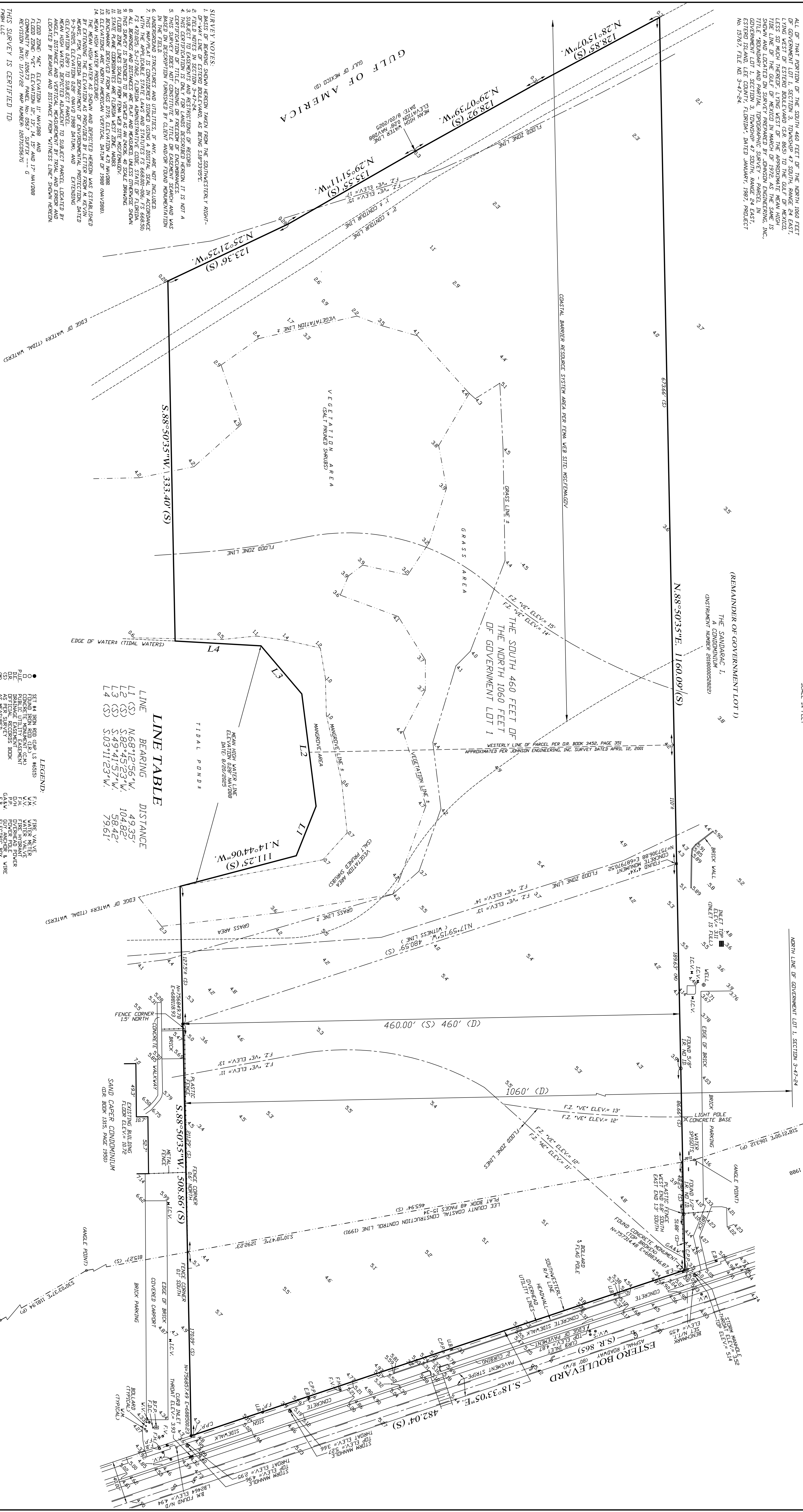
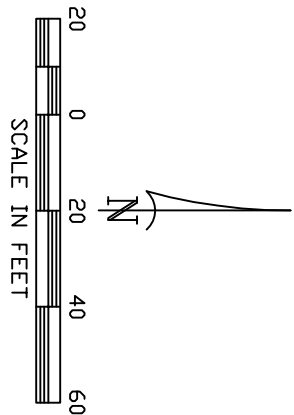
ALL OF THAT PORTION OF THE SOUTH 460 FEET OF THE NORTH 1060 FEET OF GOVERNMENT LOT 1, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, LYING WEST OF ESTERO BOULEVARD (S.R. 865) TO THE GULF OF MEXICO, LESS SO MUCH THEREOF, LYING WEST OF THE APPROXIMATE MEAN HIGH TIDE LINE IF THE GULF OF MEXICO IN MARCH OF 1972, AS THE SAME IS SHOWN AND LOCATED ON SURVEY PREPARED BY JOHNSON ENGINEERING INC., TITLE "BOUNDARY AND PARTIAL TOPOGRAPHIC SURVEY – PARCEL IN GOVERNMENT LOT 1, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA", DATED JANUARY, 1987, PROJECT No. 15767, FILE NO. 3-47-24.

BOUNDARY SURVEY OF
THE SOUTH 460 FEET, OF
THE NORTH 1060 FEET,
OF GOVERNMENT LOT 1,
SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST,
SARASOTA COUNTY, FLORIDA

(U.R. BOOK 3432, PAGE 330)
 PUBLIC RECORDS OF LEE COUNTY, FLORIDA

DESCRIPTION: (PER D.R. BOOK 3452, PAGE 350)

ALL OF THATIONPORT OF THE SOUTH, 460 FEET OF THE NORTH 060 FEET OF GOVERNMENT LOT 1, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, LESS SO MUCH OF ESTERED BLOUVAUD (SR 865) TO THE GULF OF MEXICO, LYING SO WEST THEREOF, LYING WEST OF THE APPROXIMATE MEAN HIGH TIDE LINE OF THE GULF OF MEXICO IN MARCH OF 1972, AS THE SAME IS SHOWN AND LOCATED ON SURVEY PREPARED BY JOHNSON ENGINEERING, INC. TITLE BOUNDARY AND PARTIAL TOPOGRAHICAL SURVEY - PARCEL IN GOVERNMENT LOT 1, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, ESTERED BLOUVAUD, LEE COUNTY, FLORIDA, DATED JANUARY, 1987, PROJECT 153661, FILE NO. 3-47-24.



SURVEY NOTES:
1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE SOUTHWESTERLY RIGHT

- [illegible]

THIS SURVEY IS CERTIFIED TO:

[illegible]

EXHIBIT B to DA : TITLE OPINION



October 3, 2025

VIA ELECTRONIC MAIL ONLY:

FMBH, LLC

c/o John Callis, Manager

Email: jjcallis@aol.com

Re: *Opinion of Title*

6890 Estero Boulevard, Fort Myers Beach, FL 33931

Dear John:

On behalf of FMBH LLC, we have prepared this opinion with respect to the title of certain real property located in Lee County, Florida, more particularly described as follows:

The Land is described as follows in **Exhibit "A"** attached hereto and made part hereof:

All that portion of the South 460 feet of the North 1060 Feet of Government Lot 1, Section 3, Township 47 South, Range 24 East, Lee County, Florida, lying West of Estero Boulevard (S.R. 865), Lee County, Florida, running from the Westerly side of said Estero Boulevard (S.R. 865), to the Gulf of Mexico.

In connection with this letter, we have examined and relied solely on a copy of that certain **Title Commitment #12714469** ("Title Commitment"), issued by **Chicago Title Insurance Company** ("Company") with an effective date of **September 25, 2025 at 8:00 AM** ("Effective Date"), a copy of which is attached hereto as Exhibit "A".

We note that Chicago Title will not have any liability with respect to the Title Commitment unless it issues a policy of title insurance pursuant to same.

Finally, we note that the Title Commitment is subject to various exceptions and limitations, and the quality of title, as described in the Title Commitment and in this letter, is subject to all such exceptions and limitations.

Notwithstanding the qualifications in the foregoing paragraph of this letter, we have relied on the Title Commitment, for purposes of this letter, without undertaking any further or independent investigation. Specifically, and without limiting the foregoing, we have not inspected the Property or independently evaluated the status of title of the Property.



Based solely on our review of the Title Commitment, as of the Effective Date:

(a) Title to the Property is vested in:

FMBH LLC, a Florida limited liability company. The estate or interest to be insured is **Fee Simple**.

(b) The Title to the Property was subject to those matters set forth below in **Schedule B, Part II Exceptions**:

Schedule B, Part II Exceptions

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this form.
2. Taxes and assessments for the year **2025 and subsequent years**, which are not yet due and payable.
3. Standard Exceptions:
 - A. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
 - B. Rights or claims of parties in possession not shown by the public records.
 - C. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.
 - D. Taxes or assessments which are not shown as existing liens in the public records.
4. Any claim that any portion of the insured land is sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands accreted to such land.
5. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land.
6. Title to any submerged land included within the land described in this Policy is not insured.

7. Any and all rights of the United States of America over artificially filled lands in what were formerly navigable waters, arising by reason of the United States of America's control over navigable waters in the interest of navigation and commerce, and any conditions contained in any permit authorizing the filling in of such areas.
 8. Rights of the United States of America over any portion of the Land now or formerly submerged, arising by reason of the United States' control over navigable waters in the interest of navigation and commerce.
 9. The nature, extent or existence of riparian rights or littoral rights is not insured.
 10. Notwithstanding the legal description in Schedule A, this Policy does not insure title to any lands lying below the mean or ordinary high water line of any navigable or tidally influenced waters.
 11. Subject land lies within the boundaries of **Fort Myers Beach Sewer District**, and is subject to any acts and/or assessments thereof.
 12. Right-of-Way in favor of **Lee County**, a county and political subdivision of the State of Florida.
 13. Special Warranty Deed dated June 11, 1958, given by George Mastics in favor of the **State of Florida State Road Department of Florida**, for Right-of-Way.
 14. Resolution No **78-3-16**, of the Board of County Commissioners of Lee County, Florida, regarding density of Estero Island and San Carlos Islands.
 15. Notice of Ownership made by The **Board of Trustees of the Internal Trust Fund of the State of Florida**.
 16. Easement dated August 18, 1982, given by Brock Hotel Corp. in favor of **South Florida Cable Television Corp.**, as assigned to **South Florida Cablevision, Inc.**.
 17. Resolution No. **Z-88-291**, by the Board of County Commissioners of Lee County, Florida, for Zoning and Development for Fort Myers Beach Holiday Inn, Inc..
 18. Grant of Easement dated August 1, 2008, in favor of **Comcast of the South, Inc.**, and **FMBH LLC**.
-

Schedule B, Part I Requirements

The following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - A. Duly executed Mortgage from **FMBH LLC, a Florida limited liability company**, Mortgagor, to **A natural person(s) or legal entity with financial obligations with the borrower named herein**, Mortgagee, encumbering the land described on Exhibit A hereof.

The Company will require the following as to FMBH LLC, a Florida limited liability company: ("LLC"):

- i. Proof that the LLC was in existence in its state of organization at the time it acquired title and that the LLC is currently in good standing.
 - ii. Present for review a true and complete copy of the articles of organization and operating agreement of the LLC and any amendments thereto.
 - iii. Record an affidavit from the person executing the proposed mortgage on behalf of the LLC certifying: (a) the name and state of organization of the LLC; (b) whether the LLC is member managed or manager-managed; (c) the identity of the member or manager and the person authorized to execute the mortgage; and (d) neither the LLC nor any member signing the mortgage have filed bankruptcy since the LLC acquired title.
 - iv. If the member or manager of the LLC is also a business entity, present proof of the entity's good standing and the appropriate entity documents to establish signing authority.
5. Proof of payment of any outstanding assessments in favor of Lee County, Florida, any special taxing district and any municipality. **NOTE:** If this requirement is not satisfied, the following exception will appear on Schedule B: Any outstanding assessments in favor of Lee County, Florida, any special taxing district and any municipality.
6. Proof of payment of service charges for water, sewer, waste and gas, if any, through the date of closing. **NOTE:** If this requirement is not met, the following exception will appear on Schedule B: Any lien provided for by Florida Statutes in favor of any city, town, village



or port authority for unpaid service charges for service by any water, sewer, waste or gas system supplying the insured land or service facilities.

7. Satisfaction and/or Release of that certain Mortgage and Security Agreement dated May 18, 2016, and subsequent modifications, which was last modified to increase the principal amount to **\$2,000,000.00**, in favor of **Synovus Bank**, Successor by merger with Florida Community Bank, National Association.
8. Assignment of Rents, Leases and Profits, dated May 18, 2016, in favor of **Synovus Bank**, Successor by merger with Florida Community Bank, National Association.
9. State of Florida UCC Financing Statement in favor of **Florida Community Bank N.A.**.
10. Satisfaction and/or Release of Mortgage dated May 18, 2016, and subsequent modifications, last modified to secure the new original principal amount of **\$8,000,000.00**, in favor of **Synovus Bank**, successor by Merger with Florida Community Bank, National Association.
11. To terminate the Notice of commencement recorded on January 9, 2025. This requires:
 1. Record a notice of termination, together with a contractor's final payment affidavit (with lien waiver).
 2. Obtain an owner's construction affidavit identifying all parties who have a direct contract with the owner, all parties who served a notice to owner, and all parties who began furnishing labor, services or materials within the last 45 days.
 3. Obtain a waiver and release of lien upon final payment from all lienors showing as unpaid in the contractor's final payment affidavit, all those who served a notice to owner, and all those who began furnishing labor, services or materials within the last 45 days.
 4. Obtain the Company's indemnity agreement signed by the owner/borrower.
12. For each policy to be issued as identified in Schedule A, Item 2, the Company shall not be liable under this Commitment until it receives a designation for a Proposed Insured, acceptable to the Company.



This opinion covers only the period of time set out above, is rendered for the limited purpose of due diligence review related to the Development Agreement application, and may not be relied on for any other purpose. Other than as expressly set out herein, we undertake no obligation to update or inform the addressee of any changes in the status of title to the Property that might occur subsequent to the Effective Date. This opinion is solely for the benefit of our client, **FMBH LLC**, and the parties engaged in the Development Agreement review process.

Sincerely,

/s/ Ian T. Holmes

Ian T. Holmes, Esq.



Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Issuing Agent: Grey Street Title Corp.
 Issuing Office: 711 5th Ave. South, # 200,
 Naples, FL 34102
 Issuing Office's ALTA® Registry ID:
 Loan ID Number:
 Commitment Number: 12714469
 Issuing Office File Number: 6890 Estero Blvd.
 Property Address: 6890 Estero Boulevard
 Fort Myers Beach, FL 33931
 Revision Number:

SCHEDULE A

1. Commitment Date: 09/25/2025 at: 8:00 AM
2. Policy to be issued:
 - A. 2021 ALTA Loan Policy with Florida Modifications
 Proposed Insured: A natural person(s) or legal entity with financial obligations with the borrower named herein, its successors and/or assigns as their interests may appear
 Proposed Amount of Insurance: \$1,000,000.00
 The estate or interest to be insured: Fee Simple
3. The estate or interest in the Land at the Commitment Date is: *(Identify each estate or interest covered, i.e., fee, leasehold, etc.)*

 Fee Simple
4. The Title is, at the Commitment Date, vested in: *(Identify vesting for each estate or interest identified in Item 3 above)*

 FMBH LLC, a Florida limited liability company and, as disclosed in the Public Records, has been since July 18, 2001.
5. The Land is described as follows in Exhibit "A" attached hereto and made part hereof.

Countersigned:

By: _____
 Authorized Officer or Agent

C170B09

ALTA Commitment for Title Insurance (7-1-21) w-FL Mod

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SCHEDULE B, PART I Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - A. Duly executed Mortgage from FMBH LLC, a Florida limited liability company, Mortgagor, to A natural person(s) or legal entity with financial obligations with the borrower named herein, Mortgagee, encumbering the land described on Exhibit A hereof.

The Company will require the following as to FMBH LLC, a Florida limited liability company: ("LLC"):

- i. Proof that the LLC was in existence in its state of organization at the time it acquired title and that the LLC is currently in good standing.
- ii. Present for review a true and complete copy of the articles of organization and operating agreement of the LLC and any amendments thereto.
- iii. Record an affidavit from the person executing the proposed mortgage on behalf of the LLC certifying: (a) the name and state of organization of the LLC; (b) whether the LLC is member managed or manager-managed; (c) the identity of the member or manager and the person authorized to execute the mortgage; and (d) neither the LLC nor any member signing the mortgage have filed bankruptcy since the LLC acquired title.
- iv. If the member or manager of the LLC is also a business entity, present proof of the entity's good standing and the appropriate entity documents to establish signing authority.

If the proposed mortgage will be executed by anyone other than a member or manager, those portions of the operating agreement or other documentation evidencing the authority of the signatory must be attached as an exhibit to the affidavit.

5. Proof of payment of any outstanding assessments in favor of Lee County, Florida, any special taxing district and any municipality. NOTE: If this requirement is not satisfied the following exception will appear on Schedule B:

Any outstanding assessments in favor of Lee County, Florida, any special taxing district and any municipality.

6. Proof of payment of service charges for water, sewer, waste and gas, if any, through the date of closing. NOTE: If this requirement is not met the following exception will appear on Schedule B:

Any lien provided for by Florida Statutes in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer, waste or gas system supplying the insured land or service facilities.

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SCHEDULE B, PART I Requirements

7. Satisfaction and/or Release of that certain Mortgage and Security Agreement dated May 18, 2016, given by Herbert C. Pohlmann, Jr., individually and as Trustee of the Herbert C. Pohlmann, Jr., Declaration of Trust dated June 15, 1990, as amended and restated December 12, 2011, (collectively borrower), to secure the original principal amount of \$1,000,000.00, as increased to \$1,500,000.00, as recorded on May 18, 2016, in Official Records Instrument No. 2016000109075, and as modified by Mortgage Modification, Modification of Assignment of Rents and Leases and Receipt of Future Advance, dated December 27, 2016, by and between FMBH, LLC, a Florida limited liability company, in favor of Florida Community Bank, N.A., as recorded on January 13, 2017, in Official Records Instrument No. 2017000010336, as modified by Second Mortgage Modification and Modification of Assignment of Rents and Leases, dated November 20, 2017, and recorded on November 30, 2017, in Official Records Instrument No. 2017000248428, as modified by Third Mortgage Modification and Modification of Assignment of Rents and Leases and Receipt of Future Advance, dated July 6, 2018, and recorded on July 11, 2018, in Official Records Instrument No. 2018000166689, and to increase the principal amount to \$2,000,000.00, as modified by Fourth Mortgage Modification and Modification of Assignment of Rents and Leases, dated January 31, 2020, by and between FMBH, LLC, a Florida limited liability company in favor of Synovus Bank, Successor by merger with Florida Community Bank, National Association, as recorded on February 3, 2020, in Official Records Instrument No. 2020000029317, in the Public Records of Lee County, Florida.
8. Assignment of Rents, Leases and Profits, dated May 18, 2016, in favor of Synovus Bank, Successor by merger with Florida Community Bank, National Association, as recorded in Official Records Instrument No. 2016000109076, of the Public Records of Lee County, Florida.
9. State of Florida UCC Financing Statement in favor of Florida Community Bank N.A. as recorded in Official Records Instrument No. 2016000109077, of the Public Records of Lee County, Florida.
10. Satisfaction and/or Release of Mortgage dated May 18, 2016, given by FMBH, LLC, a Florida limited liability company, in favor of Florida Community Bank, National Association, to secure the original principal amount of \$3,000,000.00, as recorded in Official Records Instrument No. 2016000108837, Mortgage Modification, Modification of Assignment of Rents and Leases and Notice and Receipt of Future Advance, dated January 31, 2020, by FMBH, LLC, a Florida limited liability company, in favor of Synovus Bank, successor by Merger with Florida Community Bank, National Association, to secure the new original principal amount of \$8,000,000.00, as recorded on February 3, 2020, in Official Records Instrument No. 2020000029294, of the Public Records of Lee County, Florida.
11. To terminate the following:

Notice of commencement recorded on January 9, 2025 in Official Records Instrument Number 2025000008556.

1. Record a notice of termination, together with a contractor's final payment affidavit (with lien waiver). A separate notice of termination, and contractor's final payment affidavit (with lien waiver), is required for each notice of commencement.

2. Obtain an owner's construction affidavit identifying all parties who have a direct contract with the owner, all parties who served a notice to owner, and all parties who began furnishing labor, services or materials within the last 45 days.

SCHEDULE B, PART I Requirements

3. Obtain a waiver and release of lien upon final payment from (i) all lienors showing as unpaid in the contractor's final payment affidavit (with lien waiver), (ii) all those who served a notice to owner or had a direct contract with the owner as listed in the owner's construction affidavit, and (iii) all those who began furnishing labor, services or materials within the last 45 days.

4. Obtain the Company's indemnity agreement signed by the owner/borrower.

NOTE: If the notice of commencement is being terminated prior to completion of the construction or if the subject transaction exceeds your agency's authorized limits, then approval of a Company State or Regional Underwriter is required.

12. For each policy to be issued as identified in Schedule A, Item 2, the Company shall not be liable under this Commitment until it receives a designation for a Proposed Insured, acceptable to the Company. As provided in Commitment Condition 4, the Company may amend this Commitment to add, among other things, additional exceptions or requirements after the designation of the Proposed Insured.

NOTE: 2024 Real Property Taxes in the gross amount of \$261,695.16 are Paid, under Tax I.D. No. 03-47-24-W1-00003.0010.

The following note is for informational purposes only, is neither guaranteed nor insured, and is not part of the coverage of this form or policy.

The last conveyance of title that has been of record for more than 24 months and all subsequently recorded conveyances are: Warranty Deed in OR Book 3452, Page 350 and OR Book 3529, Page 1418

NOTE: Section 695.26 (1)(c), F.S., provides that no instrument conveying, assigning, encumbering or otherwise disposing of an interest in real property which is executed or acknowledged in Florida shall be recorded by the clerk of court unless the post office address of each witness is legibly printed, typed or stamped upon the instrument. If an instrument containing one or more witnesses is recorded, the witnesses' addresses, as well as their names, should appear below their signatures. A business address may be used.

SCHEDULE B, PART II Exceptions

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this form.
2. Taxes and assessments for the year 2025 and subsequent years, which are not yet due and payable.
3. Standard Exceptions:
 - A. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
 - B. Rights or claims of parties in possession not shown by the public records.
 - C. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.
 - D. Taxes or assessments which are not shown as existing liens in the public records.
4. Any claim that any portion of the insured land is sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands accreted to such land.
5. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land.

NOTE: Exception 1 above shall be deemed deleted as of the time the settlement funds or proceeds of the loan to be secured by the insured mortgage, as applicable, are disbursed by the Company or its authorized agent. Neither the Company nor its agent shall, however, be under any duty to disburse any sum except upon a determination that no such adverse intervening matters have appeared of record or occurred.

NOTES ON STANDARD EXCEPTIONS:

Item 3A will be deleted from the policy(ies) upon receipt of an accurate survey of the Land acceptable to the Company. Exception will be made for any encroachment, setback line violation, overlap, boundary line dispute or other adverse matter disclosed by the survey.

Items 3B, 3C, and 3D will be deleted from the policy(ies) upon receipt of an affidavit acceptable to the Company, affirming that, except as disclosed therein (i) no parties in possession of the Land exist other than the record owner(s); (ii) no improvements have been made to the Land within 90 days prior to closing which have not have

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SCHEDULE B, PART II Exceptions

been paid for in full; and (iii) no unpaid taxes or assessments are against the Land which are not shown as existing liens in the public records. Exception will be made for matters disclosed in the affidavit.

6. Title to any submerged land included within the land described in this Policy is not insured.
7. Any and all rights of the United States of America over artificially filled lands in what were formerly navigable waters, arising by reason of the United States of America's control over navigable waters in the interest of navigation and commerce, and any conditions contained in any permit authorizing the filling in of such areas.
8. Rights of the United States of America over any portion of the Land now or formerly submerged, arising by reason of the United States' control over navigable waters in the interest of navigation and commerce.
9. The nature, extent or existence of riparian rights or littoral rights is not insured.
10. Notwithstanding the legal description in Schedule A, this Policy does not insure title to any lands lying below the mean or ordinary high water line of any navigable or tidally influenced waters.
11. Subject land lies within the boundaries of Fort Myers Beach Sewer District, and is subject to any acts and/or assessments thereof.
12. Right-of-Way in favor of Lee County, a county and political subdivision of the State of Florida, as recorded in Deed Book 189, Page 157, of the Public Records of Lee County, Florida.
13. Special Warranty Deed dated June 11, 1958, given by George Mastics in favor of the State of Florida State Road Department of Florida, for Right-of-Way, as recorded on June 18, 1958, in Official Records Book 286, Page 362, of the Public Records of Lee County, Florida.
14. Resolution No 78-3-16, of the Board of County Commissioners of Lee County, Florida, regarding density of Estero Island and San Carlos Islands, as recorded in Official Records Book 1438, Page 1739, of the Public Records of Lee County, Florida.
15. Notice of Ownership made by The Board of Trustees of the Internal Trust Fund of the State of Florida, as recorded in Official Records Book 1512, Page 1918, of the Public Records of Lee County, Florida.
16. Easement dated August 18, 1982, given by Brock Hotel Corp. in favor of South Florida Cable Television Corp., a Florida corporation, as recorded in Official Records Book 1648, Page 3787, as assigned by Assignment of Easement, dated August 27, 1985, in Official Records Book 1801, Page 2475, in favor of South Florida Cablevision, Inc., a Florida corporation, in the Public Records of Lee County, Florida.
17. Resolution No. Z-88-291, by the Board of County Commissioners of Lee County, Florida, for Zoning and Development for Fort Myers Beach Holiday Inn, Inc., as recorded on November 29, 1988, in Official Records Book 2032, Page 1777, of the Public Records of Lee County, Florida.
18. Grant of Easement dated August 1, 2008, in favor of Comcast of the South, Inc., and FMBH LLC, as recorded on May 14, 2009, in Official Records Instrument No. 2009000131425, of the Public Records of Lee County, Florida.

NOTE: All recording references in this form shall refer to the public records of Lee County, Florida, unless otherwise noted.

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SCHEDULE B, PART II Exceptions

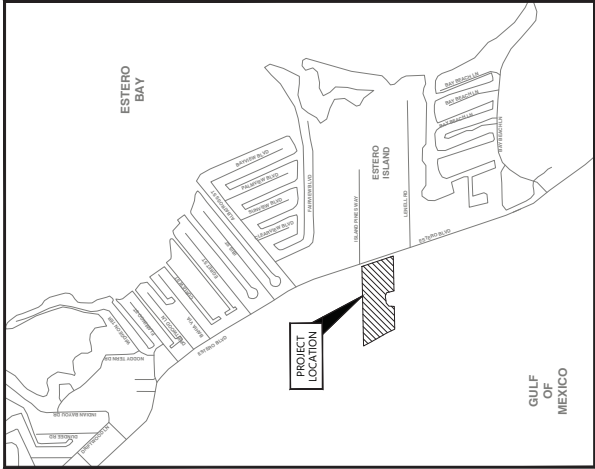
NOTE: In accordance with Florida Statutes section 627.4131, please be advised that the insured hereunder may present inquiries, obtain information about coverage, or receive assistance in resolving complaints, by contacting Chicago Title Insurance Company, 4210 Metro Parkway, Ft. Myers, FL 33916; Telephone 239-275-8212.

Searched By: Pamela L. Foster, CLS

EXHIBIT "A"

All that portion of the South 460 feet of the North 1060 Feet of Government Lot 1, Section 3, Township 47 South, Range 24 East, Lee County, Florida, lying West of Estero Boulevard (S.R. 865), Lee County, Florida, running from the Westerly side of said Estero Boulevard (S.R. 865), to the Gulf of Mexico.

DEVELOPMENT AGREEMENT SITE PLAN
6890 ESTERO BLVD
SECTION 3, TOWNSHIP 47S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



VICINITY MAP
NOTES



SITE LOCATION MAP
NOTES

PREPARED BY:

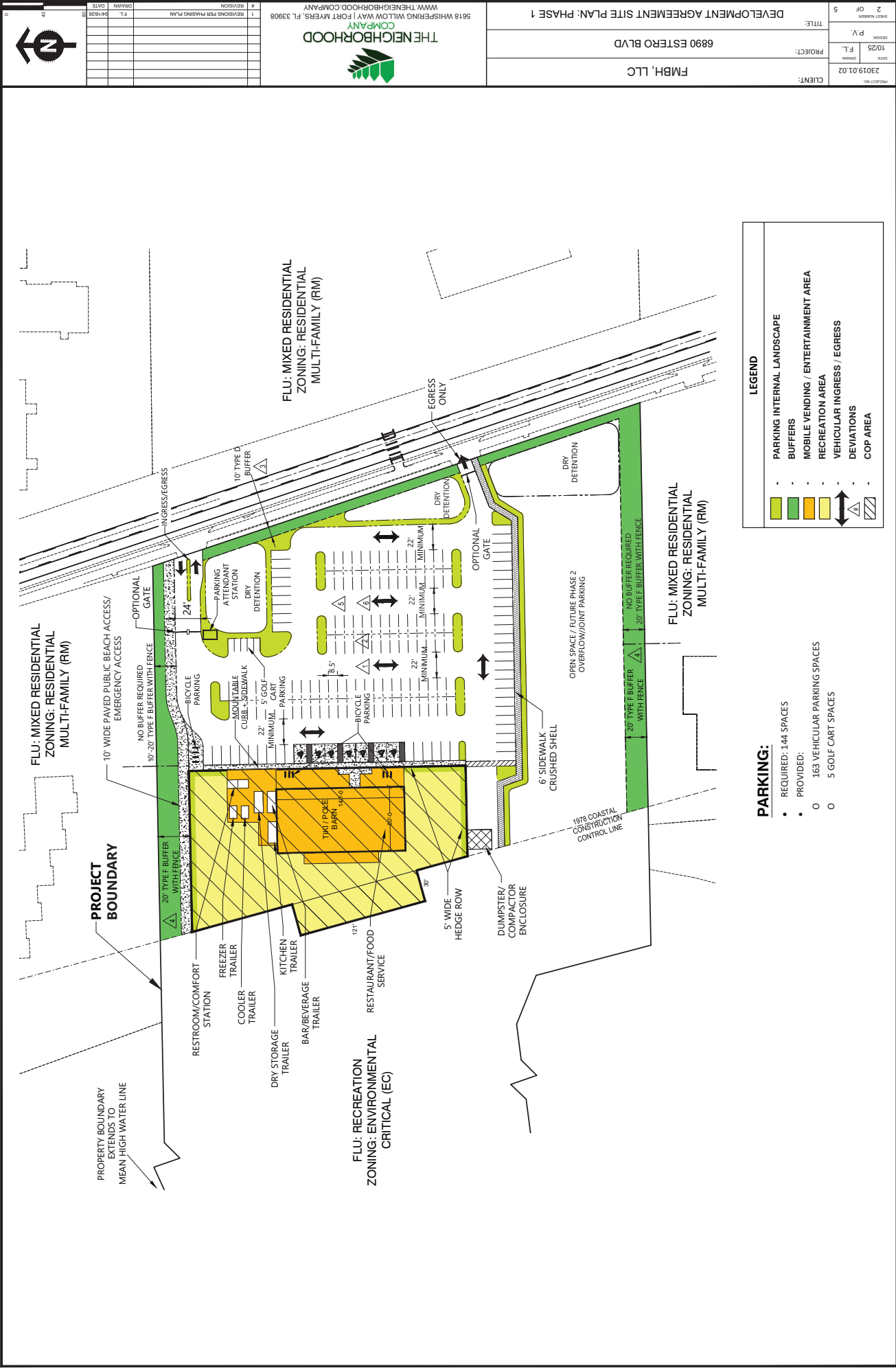


5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

FMBH, LLC
4100 CORPORATE SQUARE
SUITE 155
NAPLES, FL 34104

CONTENTS	
SHEET NUMBER	SHEET DESCRIPTION
1	COVER SHEET
2	SITE PLAN: PHASE 1
3	PHASE 1: NOTES
4	SITE PLAN: PHASE 2
5	PHASE 2: NOTES
DATE	PROJECT No. 23019.01.02
May, 2026	SHEET No. 1 OF 5



GENERAL NOTES:

1. THIS DEVELOPMENT AGREEMENT SITE PLAN IS CONCEPTUAL IN NATURE. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE STRUCTURE(S), MOBILE USES AND OTHER IMPROVEMENTS MAY VARY SLIGHTLY. FINAL DESIGN AND IMPROVEMENT DETAILS WILL BE PROVIDED AS PART OF THE DEVELOPMENT ORDER (D.O.) PROCESS.
2. FUTURE LAND USE MAP CATEGORY: MIXED RESIDENTIAL
3. ZONING: COMMERCIAL RESORT (CR) DISTRICT
4. WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT THE TIME OF D.O.
5. TOTAL PROPERTY AREA IS 11.19 +/- ACRES OF WHICH 7.406 +/- ACRES IS SEAWARD OF THE 1978 CCCL AND 3.786 +/- ACRES IS LANDWARD OF THE 1978 CCCL
6. THE PROJECT WILL BE DEVELOPED IN TWO PHASES AND IN ACCORDANCE WITH PHASE 1 AND PHASE 2 SITE PLANS.
7. OTHER THAN THE APPROVED DEVIATIONS, ALL DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 34 OR OTHER APPLICABLE PROVISIONS OF THE LDC AT TIME OF APPROVAL.

SCHEDULE OF USES:

PERMITTED OR ZONING DISTRICT USES:

- ALL RESIDENTIAL, LODGING, OFFICE, RETAIL, MARINE AND CIVIC USES PERMITTED WITHIN CR ZONING DISTRICT.

COMMERCIAL:

- FOOD SERVICE/RESTAURANT/BAR
 - MOBILE VENDING:
 - o MOBILE RESTAURANT/FOOD SERVICE
 - o MOBILE BAR/BEVERAGE STATION
 - o MOBILE RESTROOMS/COMFORT STATION
 - o MOBILE WALK-IN COOLER
 - o MOBILE ADMINISTRATIVE OFFICE
 - TIKI STRUCTURE, OUTDOOR SEATING, ENTERTAINMENT AND RECREATION AREA AS DEPICTED ON THE SITE PLAN
 - OUTDOOR SERVICE AND CONSUMPTION ON PREMISES (COP) LIMITED TO THE DESIGNATED HATCHED AREA ON THE SITE PLAN
 - COMMERCIAL PARKING LOT
 - o SINGLE PURPOSE PARKING LOT
 - o SHARED PARKING LOT LIMITED TO SOUTHERN PARKING AREA INCITED ON THE SITE PLAN. THIS AREA WILL ALLOW JOINT USE PARKING FOR ISLAND BUSINESSES (RESTAURANTS AND HOTELS WITHIN ONE MILE) AND WILL ALLOW EVENING AND OVERNIGHT PARKING. WHEN IN USE, THIS AREA WILL BE ACCESS-CONTROLLED FOR AUTHORIZED PERSONNEL ONLY.
 - PARASAILING, PERSONAL WATERCRAFT AND OTHER WATER SPORT OPERATIONS
 - BEACH CHAIR, UMBRELLA AND ACCESSORY RENTALS WITH VALID CHAIR RENTAL PERMIT ONLY
- ### ACCESSORY USES:
- TYPICAL ACCESSORY USES INCIDENTAL AND SUBORDINATE TO THE PRINCIPAL USES
 - ESSENTIAL SERVICES
 - PUBLIC BEACH ACCESS/PATHWAY
 - GATES AND FENCING

DEVIATIONS:

1. DEVIATION FROM LDC SECTION 34-2017, WHICH REQUIRES HIGH TURNOVER PARKING LOTS TO HAVE A PAVED SURFACE, TO ALLOW A STABILIZED GRAVEL/LIME ROCK/CRUSHED SHELL PARKING SURFACE.
2. DEVIATION FROM LDC SECTION 10-416(C)(2)(D), WHICH REQUIRES THAT NO MORE THAN AN AVERAGE OF TEN PARKING SPACES CAN OCCUR WITHOUT A LANDSCAPE ISLAND, TO ALLOW INTERNAL LANDSCAPING AS DEPICTED IN EXHIBIT C.
3. DEVIATION FROM LDC SECTION 10-416(D)(2) TABLE 10-8, WHICH REQUIRES A 15-FOOT-WIDE TYPE D BUFFER WHEN THE PROPOSED PARKING AND VEHICLE USE AREA ABUTS A RIGHT-OF-WAY OR ROAD EASEMENT, TO ALLOW FOR A MINIMUM 10-FOOT-WIDE TYPE D BUFFER.
4. DEVIATION FROM LDC SECTION 10-416(D)(2) TABLE 10-8, WHICH REQUIRES A 15-FOOT-WIDE TYPE C BUFFER OR A 30-FOOT-WIDE TYPE F BUFFER WHEN A COMMERCIAL USE ABUTS A MULTI-FAMILY RESIDENTIAL USE, TO ALLOW FOR A MINIMUM 20-FOOT-WIDE TYPE F BUFFER WITH A CHAIN LINK FENCE.
5. DEVIATION FROM LDC SECTION 34-2016(4) WHICH REQUIRES INDIVIDUAL PARKING STALLS TO BE DELINEATED WITH PARKING BLOCKS (AKA WHEEL STOPS) TO ALLOW A ROPE AND BOLLARD SYSTEM WHERE THE ROPES WHERE 8.5' SEGMENTS ARE PAINTED WHITE TO DELINEATE THE WIDTH OF INDIVIDUAL PARKING STALLS.
6. DEVIATION FROM LDC SECTION 10-416(C) WHICH REQUIRES INTERNAL LANDSCAPING INCLUDING LANDSCAPE ISLAND FREQUENCY, GROUND COVER MATERIAL AND DIMENSIONS TO LIMIT LANDSCAPE ISLANDS TO TERMINAL ISLANDS AT THE END OF DRIVE AISLES AND ALLOW THEM TO BE COMPRISED OF HEDGES IN COMBINATION WITH MULCH AS GROUND COVER.

MAXIMUM INTENSITY:

- MAXIMUM 11,200 SF TIKI STRUCTURE
- MAXIMUM OF 6 MOBILE VENDING/TRAILERS
- MAXIMUM MOBILE VENDING/ENTERTAINMENT AREA OF 13,000 SF
- MAXIMUM RECREATION AREA OF 19,000 SF
- MAXIMUM COP AREA OF 32,000 SF

PARKING:

- REQUIRED: 144 PARKING SPACES
- PROVIDED: 163 SPACES AND 5 GOLF CART SPACES

PROJECT NO. 23019.01.02		DATE 10/25	REVISION 10/25	3 OF 5
CLIENT: FMBH, LLC		PROJECT: 6890 ESTERO BLVD		TITLE: PHASE 1 NOTES
5618 WHISPERING WILLOW WAY FORT MYERS, FL 33908		THE NEIGHBORHOOD COMPANY		
REVISION		DATE		
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- ### SCHEDULE OF USES:

- ALL RESIDENTIAL, LODGING, OFFICE, RETAIL, MARINE AND CIVIC USES PERMITTED WITHIN CR ZONING DISTRICT.

- ACCESSORY USES:**

- ESSENTIAL SERVICES
- PUBLIC BEACH ACCESS/PATHWAY
- GATES AND FENCING

DEVIATION FROM LDC SECTION 34-2017, WHICH REQUIRES HIGH TURNOVER PARKING LOTS TO HAVE A PAVED SURFACE, TO ALLOW A STABILIZED GRAVEL/ALME ROCK/CRUSHED SHELL PARKING SURFACE.

DEVIATION FROM LDC SECTION 10-416(D)(2) TABLE 10-8, WHICH REQUIRES A 15-FOOT-WIDE TYPE D BUFFER WHEN THE PROPOSED PARKING AND VEHICLE USE AREA ABUTS A RIGHT-OF-WAY OR ROAD EASEMENT, TO ALLOW FOR A MINIMUM 10-FOOT-WIDE TYPE D BUFFER.

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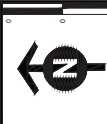
DEVIATION FROM LDC SECTION 34-2018 WHICH ALLOWS THE JOINT USE OF PARKING LOTS FOR UNRELATED BUSINESSES WITHIN 750', TO ALLOW THE JOINT USE PARKING AREA FOR ANY BUSINESS ON THE ISLAND WITH VALET PARKING.

- MAXIMUM 11,200 SF TIKI STRUCTURE
- MAXIMUM OF 5,000 SF RESTAURANT
- MAXIMUM RESTAURANT AND RECREATION AREA OF 11,500 SF
- MAXIMUM RECREATION AREA OF 21,500 SF
- MAXIMUM COP AREA OF 33,000 SF

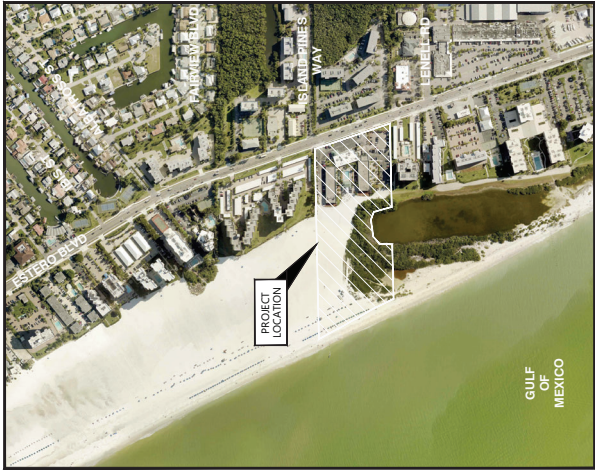
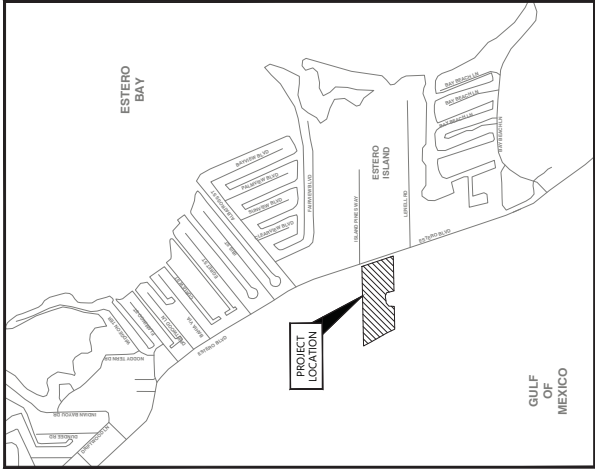
- **REQUIRED: 147 PARKING SPACES**
- **PROVIDED: ± 237 SPACES AND 10 GOLF CART SPACES**

PROJECT NO.: 23019.01.02	
DATE: 10/25	DRAWN: F.L.
DESIGN: P.V.	
SHEET NUMBER: 5 OF 5	

CLIENT:	FMBH, LLC
PROJECT:	6890 ESTERO BLVD
TITLE:	PHASE 2 NOTES



DEVELOPMENT AGREEMENT SITE PLAN
6890 ESTERO BLVD
SECTION 3, TOWNSHIP 47S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



PREPARED BY:


**THE NEIGHBORHOOD
COMPANY**
5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

FMBH, LLC

4100 CORPORATE SQUARE
SUITE 155
NAPLES, FL 34104

CONTENTS	
SHEET NUMBER	SHEET DESCRIPTION
1	COVER SHEET
2	SITE PLAN: PHASE 1
3	PHASE 1: NOTES
4	SITE PLAN: PHASE 2
5	PHASE 2: NOTES
DATE	PROJECT No.
May, 2026	23019.01.02
	SHEET No.
	1 OF 5

GENERAL NOTES:

1. THIS DEVELOPMENT AGREEMENT SITE PLAN IS CONCEPTUAL IN NATURE. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE STRUCTURE(S), MOBILE USES AND OTHER IMPROVEMENTS MAY VARY SLIGHTLY. FINAL DESIGN AND IMPROVEMENT DETAILS WILL BE PROVIDED AS PART OF THE DEVELOPMENT ORDER (D.O.) PROCESS.
2. FUTURE LAND USE MAP CATEGORY: MIXED RESIDENTIAL
3. ZONING: COMMERCIAL RESORT (CR) DISTRICT
4. WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT THE TIME OF D.O.
5. TOTAL PROPERTY AREA IS 11.19 +/- ACRES OF WHICH 7.406 +/- ACRES IS SEAWARD OF THE 1978 CCCL AND 3.786 +/- ACRES IS LANDWARD OF THE 1978 CCCL
6. THE PROJECT WILL BE DEVELOPED IN TWO PHASES AND IN ACCORDANCE WITH PHASE 1 AND PHASE 2 SITE PLANS.
7. OTHER THAN THE APPROVED DEVIATIONS, ALL DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 34 OR OTHER APPLICABLE PROVISIONS OF THE LDC AT TIME OF APPROVAL.

SCHEDULE OF USES:

PERMITTED OR ZONING DISTRICT USES:

- ALL RESIDENTIAL, LODGING, OFFICE, RETAIL, MARINE AND CIVIC USES PERMITTED WITHIN CR ZONING DISTRICT.

COMMERCIAL:

- FOOD SERVICE/RESTAURANT/BAR
 - MOBILE VENDING:
 - MOBILE RESTAURANT/FOOD SERVICE
 - MOBILE BAR/BEVERAGE STATION
 - MOBILE RESTROOMS/COMFORT STATION
 - MOBILE WALK-IN COOLER
 - MOBILE ADMINISTRATIVE OFFICE
 - TIKI STRUCTURE, OUTDOOR SEATING, ENTERTAINMENT AND RECREATION AREA AS DEPICTED ON THE SITE PLAN
 - OUTDOOR SERVICE AND CONSUMPTION ON PREMISES (COP) LIMITED TO THE DESIGNATED HATCHED AREA ON THE SITE PLAN
 - COMMERCIAL PARKING LOT
 - SINGLE PURPOSE PARKING LOT
 - SHARED PARKING LOT LIMITED TO SOUTHERN PARKING AREA INCITED ON THE SITE PLAN. THIS AREA WILL ALLOW JOINT USE PARKING FOR ISLAND BUSINESSES (RESTAURANTS AND HOTELS WITHIN ONE MILE) AND WILL ALLOW EVENING AND OVERNIGHT PARKING. WHEN IN USE, THIS AREA WILL BE ACCESS-CONTROLLED FOR AUTHORIZED PERSONNEL ONLY.
 - PARASAILING, PERSONAL WATERCRAFT AND OTHER WATER SPORT OPERATIONS
 - BEACH CHAIR, UMBRELLA AND ACCESSORY RENTALS WITH VALID CHAIR RENTAL PERMIT ONLY
- ACCESSORY USES:
- TYPICAL ACCESSORY USES INCIDENTAL AND SUBORDINATE TO THE PRINCIPAL USES
 - ESSENTIAL SERVICES
 - PUBLIC BEACH ACCESS/PATHWAY
 - GATES AND FENCING

DEVIATIONS:

1. DEVIATION FROM LDC SECTION 34-2017, WHICH REQUIRES HIGH TURNOVER PARKING LOTS TO HAVE A PAVED SURFACE, TO ALLOW A STABILIZED GRAVEL/LIME ROCK/CRUSHED SHELL PARKING SURFACE
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MAXIMUM INTENSITY:

- MAXIMUM 11,200 SF TIKI STRUCTURE
- MAXIMUM OF 5,000 SF RESTAURANT
- MAXIMUM RESTAURANT AND RECREATION AREA OF 11,500 SF
- MAXIMUM RECREATION AREA OF 21,500 SF
- MAXIMUM COP AREA OF 33,000 SF

PARKING:

- REQUIRED: 147 PARKING SPACES
- PROVIDED: ± 237 SPACES AND 10 GOLF CART SPACES

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PROJECT: 6890 ESTERO BLVD		PHASE 2 NOTES	
CLIENT: FMBH, LLC		5618 WHIPPERING WILLOW WAY FORT MYERS, FL 33908	
TITLE:		THE NEIGHBORHOOD COMPANY	
P.V.		WWW.THENEIGHBORHOOD.COM/PANY	
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Exhibit C- Proposed Deviations

Deviation	LDC Section	Code Requirement	Requested Deviation	Phase
#1	Section 34-2017	High-turnover parking lots must have a paved surface.	Allow a stabilized gravel, limestone, or crushed shell parking surface.	Phase 1 & Phase 2
#2	Section 10-416(c)(2)d	No more than an average of ten parking spaces may occur without a landscape island.	Allow internal landscaping as depicted in Exhibit C.	Phase 1 only (Phase 2 will comply.)
#3	Section 10-416(d)(2), Table 10-8	A 15-foot-wide Type D buffer is required when a parking or vehicular use area abuts a right-of-way or road easement.	Allow a minimum 10-foot-wide Type D buffer.	Phase 1 & Phase 2
#4	Section 10-416(d)(2), Table 10-8	A 15-foot-wide Type C buffer or a 30-foot-wide Type F buffer is required when a commercial use abuts a multifamily residential use.	Allow a 20-foot-wide Type F buffer with a chain-link fence.	Phase 1 & Phase 2
#5	Section 34-2016(4)	Individual parking stalls must be delineated with parking blocks (wheel stops).	Allow a rope-and-bollard system with 8.5-foot rope segments painted white to delineate parking stall widths.	Phase 1 only (Phase 2 will comply.)
#6	Section 10-416(c)	Internal landscaping standards require landscape island frequency, dimensions, and approved ground cover materials.	Limit landscape islands to terminal islands at the ends of drive aisles and allow hedges with mulch as ground cover.	Phase 1 only (Phase 2 will comply.)
#7	Section 34-2018	Joint use parking for unrelated businesses is limited to properties within 750 feet of one another.	Allow the joint use parking area to serve any business on Fort Myers Beach through valet parking operations.	Phase 2 only

Exhibit D: CONDITIONS OF APPROVAL

OUTSTANDING ISSUES/ CONDITIONS FOR APPROVAL

Staff recommend the following items for discussion: -

1. Clarification regarding timing and enforceability of Phase 2 improvements and removal of temporary Phase 1 facilities. The applicant email suggested 3 -3.5 years for Phase 1 followed by Phase 2.
2. The FMB code doesn't have any code section on DA timeline. However, since the proposed DA is accompanied by Master Concept plan; according to code section 34-220 Duration of right conferred by adopted master concept plan states that: An approved Master Concept Plan (MCP) is automatically vacated if a development order for the first phase is not obtained within **three (3) years** of the original Town Council approval.
 - a. The first phase must include at least **20 percent** of the total project intensity (lots, dwelling units, square footage, or similar measurement), unless a lesser percentage is approved by the Town Council. The Town Council may approve a separate phasing schedule through the rezoning resolution.
 - b. If no phasing plan is approved, the following default timelines apply:
 - i. **Within five (5) years** of approval, the first phase must be completed and a development order obtained for the second phase, representing at least **50 percent** of the project.
 - ii. **Within eight (8) years** of approval, the second phase must be completed and development orders obtained for the **entire project**.
3. Additional operational details regarding valet parking and remote joint parking management. A revised TIS may be required at the DO level of Phase 2.
4. Currently, there is no stormwater management plan in place. However, the development will need to establish either a dedicated stormwater facility or provide evidence of access to a shared stormwater pond in the plaza area.
5. Clarification of landscaping, buffering, and screening details at Development Order stage.
6. Provide a Signage Plan before the DO approval. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. Confirmation that deviations associated with Phase 1 expire upon completion of Phase 2 improvements.
8. The boundary of the property and survey is subject to approval by the Town Surveyor and Council. Music shall follow the town noise ordinance.

Exhibit E: OUTSTANDING ISSUES for Discussion

Staff recommend the following items for discussion: -

1. Clarification regarding timing and enforceability of Phase 2 improvements and removal of temporary Phase 1 facilities. The applicant email suggested 3 -3.5 years for Phase 1 followed by Phase 2.
2. The FMB code doesn't have any code section on DA timeline. However, since the proposed DA is accompanied by Master Concept plan; according to code section 34-220 Duration of right conferred by adopted master concept plan states that: An approved Master Concept Plan (MCP) is automatically vacated if a development order for the first phase is not obtained within **three (3) years** of the original Town Council approval.
 - a. The first phase must include at least **20 percent** of the total project intensity (lots, dwelling units, square footage, or similar measurement), unless a lesser percentage is approved by the Town Council. The Town Council may approve a separate phasing schedule through the rezoning resolution.
 - b. If no phasing plan is approved, the following default timelines apply:
 - i. **Within five (5) years** of approval, the first phase must be completed and a development order obtained for the second phase, representing at least **50 percent** of the project.
 - ii. **Within eight (8) years** of approval, the second phase must be completed and development orders obtained for the **entire project**.
3. Additional operational details regarding valet parking and remote joint parking management.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Development Agreement

CASE NUMBER: DA20250277

CASE NAME: 6890 Estero Blvd- Old Wyndham

LPA

HEARING DATE: June 16, 2026, 9 AM

STAFF

RECOMMENDATION: NA

PREPARED/

SUBMITTED BY: Uma Sarmistha, Ph.D./ Jason Green, AICP

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company (Applicant)

Request: The applicant is requesting a Development Agreement with 7 deviations to allow the redevelopment of a restaurant and a family entertainment venue on the Old Wyndham/Holiday Inn property. The request is a Phased agreement.

Subject property: 6890 Estero Blvd.

Physical Address: 6890 Estero Blvd

STRAP #: 03-47-24-W1-00003.0010

FLU: Mixed Residential

Zoning: Commercial Resort (CR)

Adjacent zoning and land uses:

North:	Residential Multi Family / Medium Residential
South:	Residential Multi Family / Medium Residential
East:	Residential Multi Family / Medium Residential
West:	EC/ Gulf

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, on behalf of FMBH, LLC, is requesting approval of a Development Agreement with deviations for redevelopment of the former Wyndham/Holiday Inn property located at 6890 Estero Boulevard. The proposal includes a Phased redevelopment consisting of a restaurant, open-air entertainment venue, recreation uses, accessory parking, and future joint parking operations

- **Phase 1:** Open a restaurant and entertainment venue with recreational uses as quickly as possible. In order to expedite the opening of this venue, temporary mobile vending trailers will be utilized to comply with FEMA and Florida Building code flood regulations.
- **Phase 2:** This Phase will require the design, permitting and construction of a wave dissipation wall combined with a flood map revision to change the property's flood zone from VE to AE. The map change will allow for construction of permanent dry flood-proofed structures that will replace and eliminate the use of temporary trailers. Additionally, the recreation uses will be expanded to include a pool and lazy river. The two Phases are described in more detail below.

The underlying zoning for this property is Commercial Resort that housed hotels like Holiday Inn and Wyndham Garden since 1969. The property was severely damaged during the hurricane Ian in 2022. The owner of the property believes that the highest and best use for this property was and remains a resort hotel. However, the current conditions remain unfavorable financially to establish a resort hotel. As a result, the Development Agreement will allow limited uses outlined in Phase 1 and 2, (depicted in Exhibits C and D) of the agreement. However, the agreement also includes permitted uses under the current CR zoning district, including Commercial Resort, but those uses cannot be developed/constructed unless the Development Agreement is amended or terminated.

Design and Compliance:

For the Phase 1 proposed site design includes the restaurant and ancillary uses, except for the tiki structure, will be provided via six mobile trailers. Those uses will be located within the Mobile vending/entertainment area and commercial parking lot. A tiki/pole barn structure, not to exceed 11,200 square feet, will provide covered outdoor seating, and space for live entertainment. Outdoor service and Consumption on Premises (COP) will be allowed throughout the Mobile Vending/Entertainment and Recreation Areas.

Proposed Phase 2 will be constructed with a wave dissipation wall, and replacement of the mobile vending trailers with a permanent restaurant constructed within the Tiki/Pole Barn structure. Due

to the elimination of the mobile vending trailers, the Restaurant/Entertainment area will be reconfigured slightly and will decrease in size to a maximum of 11,500 square feet. The Recreation Area will be modified to include a pool and lazy river and will increase in size to 21,500 square feet. The COP will be maintained throughout the Restaurant/Entertainment and Recreation Areas.

The proposed Development Agreement is requesting the uses and improvements for a limited duration while maintaining the underlying zone and right to develop a commercial resort in the future with following seven deviations.

- Deviation #1: A deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow a stabilized gravel/lime rock/crushed shell parking surface.
- Deviation #2: A deviation from LDC Section 10-416(c)(2)d, which requires that no more than an average of ten parking spaces can occur without a landscape island, to allow internal landscaping as depicted in Exhibit C. This deviation applies to Phase 1 only. Phase 2 will comply with requirements of this code section.
- Deviation #3: A deviation from LDC Section 10-416(d)(2) table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement, to allow for a minimum 10-foot-wide Type D buffer.
- Deviation #4: A deviation from LDC Section 10-416(d)(2) table 10-8, which requires a 15-foot-wide Type C buffer or a 30-foot-wide Type F buffer when a commercial use abuts a multi-family residential use, to allow for a 20-foot-wide Type F with a chain link fence.
- Deviation #5: A deviation from LDC Section 34-2016(4) which requires individual parking stalls to be delineated with parking blocks (aka wheel stops) to allow a rope and bollard system where 8.5' rope segments are painted white to delineate the width of individual parking stalls. This deviation applies to Phase 1 only. Phase 2 will comply with this code section.
- Deviation #6: A deviation from LDC Section 10-416(c) which requires internal landscaping including landscape island frequency, ground cover material and dimensions to limit landscape islands to terminal islands at the end of drive aisles and allow them to be comprised of hedges in combination with mulch as groundcover. This deviation applies to Phase 1 only. Phase 2 will comply with this code section.
- Deviation #7: A deviation from LDC Section 34-2018 which allows the joint use of parking lots for unrelated businesses within 750', to allow the joint use parking area for any business on the island with valet parking. This deviation applies to Phase 2 only.

Analysis:

The subject property is located within the Santini Marina Mixed-Use area on the south end of Fort Myers Beach. The Comprehensive Plan identifies this area as an important mixed-use and tourist-supporting commercial district intended to support entertainment, restaurant, marina, recreation, and pedestrian-oriented activities.

The intent of the redevelopment is to immediately provide dining, entertainment, recreational, and public beach access opportunities in the south end of the island while maintaining the underlying zone and right to redevelop a commercial resort.

The new proposal aims to comply with the Land Development Code and Comprehensive Plan, requesting deviations only where necessary. The property is approximately **11.19** acres out of which 3.786 acres is developable and located landward of 1978 CCCL line.

The proposed Phased redevelopment approach reflects current redevelopment constraints associated with FEMA regulations, floodplain limitations, and post-hurricane market conditions. Staff recognize that the proposal attempts to balance near-term activation of the site with long-term redevelopment goals through the eventual construction of permanent facilities during Phase 2.

For Phase 1; as depicted on the site plan, a maximum of 13,000 square feet consist of compacted subgrade with pavers and mountable curbs to allow easy maneuvering of the trailers as may be needed. A tiki/pole barn structure, not to exceed 11,200 square feet, will provide covered outdoor seating, and entertainment. The recreation area on the Site Plan will be a maximum of 19,000 square feet and will be ancillary and complementary to the restaurant. It will be delineated with ropes and posts and may contain but is not limited to beach chair seating; rental of beach chairs, umbrellas, cabanas and beach accessories; parasailing; rental of personal watercraft and other watersport operations; and outdoor games such as beach volleyball, cornhole and bocce ball. A total of 163 parking spaces including paid parking would be provided on the site including paid parking.

As part of Phase 2, a wave dissipation wall will be constructed, and the mobile vending trailers will be replaced with a permanent restaurant constructed within the Tiki/Pole Barn structure. Due to the elimination of the mobile vending trailers, the Restaurant/Entertainment area will be reconfigured slightly and will decrease in size to a maximum of 11,500 square feet. The Recreation Area will be modified to include a pool and lazy river and will increase in size to 21,500 square feet. A total of 237 parking spaces including paid parking would be provided on the site. In Phase 2 of the project the applicant will request for a town approved joint parking agreement based on revised TIS. This area will be fenced and gated and utilized as needed, to accommodate overflow/offsite parking from island hotels and restaurants during peak parking demand periods.

Apart from this, proposal is requesting a COP limiting restaurant/entertainment areas in both Phases.

The project proposes operational limitations intended to minimize impacts to surrounding residential properties, including:

- Operating hours are limited generally from 7:00 AM to 9:30 PM;
- Amplified sound limited from 10:00 AM to 9:00 PM;
- Live music restricted to the tiki/pole barn structure; and
- Direction of amplified sound toward the Gulf.

Consistency with Comprehensive Plan

GOAL 4 (FLU 1): To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage to the natural and built environment that a hurricane, sea-level rise, and coastal erosion could inflict.

OBJECTIVE FLU1-A-1: A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move throughout the island around without the need of cars even in the midst of peak-season congestion.

POLICY 4 A-2 FLU-1-A-2: The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm. All new development is encouraged to provide for amenities that enhance the public realm, including, but not limited to: art, benches, bike racks, trash receptacles, right-of-way landscaping, etc.

Applicant Response: The proposed sidewalk and multi-use pathway, provides interconnection between the beach, the subject property, Estero Boulevard and surrounding condo and commercial activity, enhances the public realm and helps support what can be described as an emerging mixed-use node on the south end of the island.

Staff comment: None

Policy FLU-1-C-2 COMMERCIAL INTENSITY - The maximum intensity of allowable commercial development in any category may be controlled by height and Floor to Area Ratio (FAR) regulations or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses on properties with frontage on Estero Boulevard and only in the “Pedestrian Commercial”, “Mixed-Use”, and “Boulevard” category categories.

Applicant Response: The proposed development represents a decrease in commercial intensity versus the pre-storm resort hotel use. The mobile trailers and open-air tiki structure, while not meeting the strict definition of “floor area” collectively represents much less square footage than what previously existed and accounts for a fraction of the 1.5 FAR allowed under the Mixed Residential Future Land Use Category.

Staff comment: None

POLICY 4-C-3 COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:

iii. In the “Medium Residential” category, commercial uses are limited to lower impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, satisfy concurrency requirements for public facilities, and meet the design concepts of this plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process.

Applicant Response : As described above, the proposed interim uses are consistent with the hotel use that existed pre-Hurricane Ian; the uses include public benefits and public uses such as beach access, public restrooms and public parking; the proposed design, buffering, setbacks and limited hours of operations are sensitive to the nearby residential uses; the project will enhance connectivity and improve the public realm; and lastly, the landowner is seeking a Development Agreement proposal which is synonymous to planned development process and requires public hearings, and the ability to limit and condition any approval.

Staff comments: The proposed use on the site is interim in nature and not intended to be permanent use in first Phase. Additional infrastructure will be required at the 2nd Phase DO.

Policy 4-C-4 Building Heights: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the build back situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza).

Applicant Response The only “permanent” structure proposed is the tiki, which will be consistent with this policy and will not exceed height limitations in the LDC.

Staff comments: Additional infrastructure will be required with the CPD application for the rebuilding of the resort in phase 2.

Coastal Management Element

GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

POLICY 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

Staff comments: The proposed use on the site is interim in nature and not intended to be permanent use. The developer agreed to follow the town permitting process for mobile trailers. hurricane

action plan will be provided at time of Development Order to address the timing and required removal of any applicable structures/mobile units prior to a hurricane event.

TRANSPORTATION ELEMENT:

GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off- island systems, and parking options matched to road capacity.

POLICY 7-D-3 ALTERNATE TRAVEL MODES

The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.

POLICY 7-F-1 ENCOURAGE SHARED PARKING LOTS:

Parking lots serving a variety of land uses require much less space than separate on-site lots for each business. Shared lots waste less land and encourage walking because businesses aren't separated by large parking lots. The town shall encourage shared parking lots when businesses are relatively small, are clustered together, and have different busy periods.

Applicant Comment: The proposed project promotes the "park-once" goal, improves public access to the beach and promotes walkability within this emerging mixed-use node. The large parking lot complements and supports the Santini commercial center and abutting marina which is planned as an eventual water ferry stop. The project encourages the use of alternate travel modes under Policy 7-D-3 by providing bike racks for bicycle parking located on the property and pedestrian connectivity along Estero Boulevard to the LeeTran "Trollee" stop in front at Santini Plaza.

Staff comment: None

UTILITIES ELEMENT:

GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

Applicant comment: The proposed project will connect existing electric, central water and sewer utilities already onsite.

Staff comment: None

Deviations from the Code

The attached document entitled *Project Narrative* includes the applicant's complete justification for the following deviations.

- **Deviation #1:** A deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow a stabilized gravel/lime rock/crushed shell parking surface.

Staff comments: Staff acknowledge that alternative parking surfaces may be appropriate in certain coastal contexts where they are properly stabilized, maintained, and designed to avoid adverse drainage or dust impacts in short duration. However the scenario shall be revisited again at the DO stage of Phase 2.

- **Deviation #2:** A deviation from LDC Section 10-416(c)(2)d, which requires that no more than an average of ten parking spaces can occur without a landscape island, to allow internal landscaping as depicted in Exhibit C. This deviation applies to Phase 1 only. Phase 2 will comply with requirements of this code section.

- *Staff comments: The proposed deviation is interim in nature and not intended to be permanent use. Thus, the staff have no objection to this requested deviation.*

- **Deviation #3:** A deviation from LDC Section 10-416(d)(2) table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement, to allow for a minimum 10-foot-wide Type D buffer.

- *Staff comments: A 10-foot-wide Type D buffer is proposed along Estero Boulevard rather than the required 15' Type D buffer. The width of a buffer is typically comprised of two components: a vegetated planting strip that includes trees and/or hedges and an open space component typically comprised of grass, ground cover or mulch. Combined, these buffers provide both separation and vegetated shielding.*

- **Deviation #4:** A deviation from LDC Section 10-416(d)(2) table 10-8, which requires a 15-foot-wide Type C buffer or a 30-foot-wide Type F buffer when a commercial use abuts a multi-family residential use, to allow for a 20-foot-wide Type F with a chain link fence.

Staff comments: Staff recognizes that the proposed 20-foot buffer incorporates elements of both the Type C and Type F buffer standards by providing increased landscaping and continuous screening together with a security fence. Staff finds that the proposed combination may provide an effective transition between the commercial and residential uses while reducing the overall buffer width from the standard Type F requirement. Subject to installation and ongoing maintenance of the required landscaping and screening elements, staff finds the request generally consistent with the intent of the LDC

to provide buffering, screening, and compatibility between differing land uses on Fort Myers Beach.

- **Deviation #5:** A deviation from LDC Section 34-2016(4) which requires individual parking stalls to be delineated with parking blocks (aka wheel stops) to allow a rope and bollard system where 8.5' rope segments are painted white to delineate the width of individual parking stalls. This deviation applies to Phase 1 only. Phase 2 will comply with this code section.

- *Staff comments: Staff acknowledges that the requested deviation is limited to Phase 1 and is intended as a temporary measure to facilitate initial site activation and operation of the restaurant and entertainment venue pending completion of Phase 2 improvements.*

- **Deviation #6:** A deviation from LDC Section 10-416(c) which requires internal landscaping including landscape island frequency, ground cover material and dimensions to limit landscape islands to terminal islands at the end of drive aisles and allow them to be comprised of hedges in combination with mulch as groundcover. This deviation applies to Phase 1 only. Phase 2 will comply with this code section.

- *Staff comments: Town staff acknowledge that the requested deviation is limited to Phase 1 and is intended as a temporary measure to facilitate initial operation of the site pending completion of Phase 2 improvements.*

- **Deviation #7:** A deviation from LDC Section 34-2018 which allows the joint use of parking lots for unrelated businesses within 750', to allow the joint use parking area for any business on the island with valet parking. This deviation applies to Phase 2 only.

Staff comment: Staff recognizes that valet operations and alternative transportation methods may increase the feasibility of off-site parking arrangements beyond the 750-foot limitation established in LDC Section 34-2018. However, the distance limitation was adopted to ensure functional accessibility and operational compatibility between parking resources and associated uses.

Thus, staff recommend revisiting this deviation with a parking study in Phase 2.

Overall, staff acknowledges that several requested deviations are proposed as temporary Phase 1 measures associated with expedited site activation and temporary trailer operations. Staff further notes that Phase 2 proposes more permanent site improvements intended to bring portions of the development into greater compliance with current LDC standards. However, staff also notes that approval of the requested deviations should be considered site-specific and should not establish precedent for future reductions to buffering, landscaping, parking, or operational standards elsewhere on Fort Myers Beach.

Neighborhood Compatibility and Public Benefit:

The area surrounding the subject property can be defined as an emerging mixed-use node. It is characterized by mid-to-high rise buildings that house residential condominiums or fractional/condo hotel resorts, an active commercial marina and a commercial center comprised of the CVS pharmacy, and Santini plaza with a variety of planned restaurant and commercial businesses.

While the existing zone for this property is Commercial Resort and the highest and best use for this property was and remains a resort hotel. The proposed DA seeks approval of the use of the property that can be delivered quickly economic benefit to the owner and the town. Due to the interim nature of the proposed uses, locational constraints (VE flood zone) the DA would provide immediate relief; however, flood compliance will be required at the DO stage for both Phases.

Public Benefit: Proposed by the developer:

- 1) **Public Beach Access.** At no cost to the Town, the Developer will construct a 10-foot-wide multi-use pathway, from Estero Boulevard to the beach, along the northern property line as depicted on the enclosed Development Agreement Site Plan (Exhibit C).
- 2) **Public Restrooms/Comfort Stations.** At no cost to the Town, the Developer will provide mobile restrooms/comfort stations which will be available to the commercial use patrons and general public.
- 3) **Limited Commercial Uses.** For the duration of this Development Agreement, the Developer voluntarily limits development to the interim uses and intensities identified herein.
- 4) **Maintaining View Corridors.** The limited interim uses will provide and maintain viewsheds/view corridors of the beach, gulf and open sky.
- 5) **Florida Friendly Landscaping.** Required landscaping for this development will incorporate Florida Friendly plantings that are salt and drought resistant and require little or no irrigation.
- 6) **Hours of Operation.** The Developer will voluntarily limit hours of operation for the restaurant and accessory uses from 7AM to 9:30PM. Notwithstanding the shared parking area, public parking operations will also be limited to 7 AM to 9PM. The shared parking area will be secured, gated and accessed by authorized personnel and will be allowed to operate in the evening and overnight. All vehicles within the shared parking area will need to be identified by a valid parking pass from a hotel or restaurant participating in a joint parking agreement.
- 7) **Amplified Sound.** Amplified sound for the tiki and recreation areas as depicted on the enclosed Development Agreement Site Plan (Exhibit C) will be limited to 10 AM to 9

PM. Live music will be allowed within the tiki structure only and all sound will be directed toward the beach and gulf.

- 8) **Turtle Compliant Lighting.** All lighting on site will be compliant with turtle protection requirements from the Town of Fort Myers Beach.
- 9) **Bike Parking.** The Developer will provide a minimum of 4 bike racks or twelve bike parking spaces.
- 10) **Proposed Uses.** The proposed restaurant, entertainment, recreation and parking uses fulfill a significant demand on the south end of the island and will benefit residents, visitors, other local businesses and Town's overall recovery. Additionally, the proposed uses in conjunction with the public beach access and public restrooms help "democratize" the beach and promote a fun and relaxed beach/island vibe that is desired.
- 11) **Positive Economic Impact.** The proposed project will take unproductive vacant property and turn it into an economically productive asset that will create direct and indirect economic impacts to the town including ad-valorem taxes, sales tax, employment, and secondary impacts to other island businesses.

Findings and Conclusions:

The applicant has submitted a Development Agreement application consistent with the procedural requirements of the Town's Administrative Code and Development Agreement regulations. The proposed redevelopment is generally consistent with the Comprehensive Plan vision for the Santini Marina Mixed-Use District and represents reinvestment in a previously developed and storm-damaged property.

The proposed uses are compatible with the historical use of the site and support the Comprehensive Plan's goals related to tourism, pedestrian activity, beach access, and redevelopment of vacant commercial properties. However, the requested deviations should be carefully considered due to their potential implications for future development standards and compatibility with adjacent residential uses.

Further, the applicant has not provided a definitive timeline for the sunset of Phase 1 operations. In email correspondence, the applicant indicated an estimated timeframe of approximately 3 to 3.5 years. Staff recommends that the duration and transition timing between Phase 1 and Phase 2 be further discussed and established by the Town Council as part of the Development Agreement approval process.

RECOMMENDATION

The development agreement included in your agenda packet results from preliminary negotiations between the applicant and Town staff, in accordance with the processes and procedures outlined in the administrative code section Ordinance 24-247. The proposed uses and some of the suggested public benefits align with the policies of the comprehensive plan.

OUTSTANDING ISSUES/ CONDITIONS FOR APPROVAL

Staff recommend the following items for discussion: -

1. Clarification regarding timing and enforceability of Phase 2 improvements and removal of temporary Phase 1 facilities. The applicant email suggested 3 -3.5 years for Phase 1 followed by Phase 2.
2. The FMB code doesn't have any code section on DA timeline. However, since the proposed DA is accompanied by Master Concept plan; according to code section 34-220 Duration of right conferred by adopted master concept plan states that: An approved Master Concept Plan (MCP) is automatically vacated if a development order for the first phase is not obtained within **three (3) years** of the original Town Council approval.
 - a. The first phase must include at least **20 percent** of the total project intensity (lots, dwelling units, square footage, or similar measurement), unless a lesser percentage is approved by the Town Council. The Town Council may approve a separate phasing schedule through the rezoning resolution.
 - b. If no phasing plan is approved, the following default timelines apply:
 - i. **Within five (5) years** of approval, the first phase must be completed and a development order obtained for the second phase, representing at least **50 percent** of the project.
 - ii. **Within eight (8) years** of approval, the second phase must be completed and development orders obtained for the **entire project**.
3. Additional operational details regarding valet parking and remote joint parking management. A revised TIS may be required at the DO level of Phase 2.
4. Currently, there is no stormwater management plan in place. However, the development will need to establish either a dedicated stormwater facility or provide evidence of access to a shared stormwater pond in the plaza area.
5. Clarification of landscaping, buffering, and screening details at Development Order stage.
6. Provide a Signage Plan before the DO approval. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. Confirmation that deviations associated with Phase 1 expire upon completion of Phase 2 improvements.
8. The boundary of the property and survey is subject to approval by the Town Surveyor and Council. Music shall follow the town noise ordinance.

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

Yellow Sheet Number: **2026-570**

1. Request:

Meeting Date: June 16, 2026

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/PROVING WITH CONDITIONS/DENYING A REZONING OF PROPERTY LOCATED AT 1207 ESTERO BLVD, FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0150D.0050 FROM DOWNTOWN ZONING DISTRICT TO A COMMERCIAL PLANNED DEVELOPMENT WITH 11 DEVIATIONS TO ALLOW FOR A 60-UNIT HOTEL, AND 2,500 SQUARE FEET OF COMMERCIAL RETAIL SPACE AND 46 PARKING SPACES; 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:

LPA reviews the application to make recommendations for Town Council consideration.

What the action accomplishes:

Town Council will consider the recommendations by LPA.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

5. Background:

The Neighborhood Company, on behalf of TPI-FMB Suites LLC, is requesting rezoning of the property located at 1207 Estero Boulevard from the Downtown zoning district to Commercial Planned Development (CPD) for redevelopment of the historic Silver Sands Resort. The property consists of approximately 0.74 acres and is identified as STRAP #19-46-24-W4-0150D.0050. The future Land Use designation is Times Square Mixed-use Commercial, and the property is located within the Downtown zoning district.

The historic Silver Sands Resort previously consisted of approximately 22 lodging units, including cottages and villas, along with accessory commercial uses and docks. The site was substantially damaged during Hurricane Ian in 2022.

The proposed application includes a new Master Concept Plan (MCP) for the site consisting of:

- A 60-unit boutique hotel (This is approximately a 173% increase in density (from 22 units to 60 units))
- Approximately 2,500 square feet of ground-floor commercial space,
- 46 onsite parking spaces,
- Rooftop pool and amenity deck,
- Canal-side activation area and dock improvements,
- Streetscape and pedestrian improvements along Estero Boulevard and Primo Drive.

According to Comprehensive plan 2045, the allowed density for Time Square mixed-use development is 6 units per acre, however the MCP is proposing approximately 81 units per acre; that is almost 12 times higher density than permitted by the code.

The proposed maximum building height will be approximately 58 feet as measured from the Florida Department of Environmental Protection (FDEP) Lowest Horizontal Structural Member (LHSM), with an overall building height of approximately 70 feet from grade to the roof peak. The

uilding will consist of six stories, including a ground-level parking floor. The maximum height will e limited to the center of the building and that the majority of the structure, front and rear, will e stepped down and limited to 5 stories.

Attachments:

- 1. NS Ordinance 26-10 CPD Silver Sands
- 2. Exhibit A: MCP 4.30.2026
- 3. Exhibit B: Schedule of Use
- 4. Exhibit C: List of Deviations- Staff
- 5. Exhibit D: Condition for Approval
- 6. Exhibit E: Architectural Elevation & Height Exh 2026-04-21
- 7. LPA Staff Report: CPD Silver Sand

Financial Impact:

unknown

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

	Date: June 05, 2026
Kendra Rosa, Zoning Coordinator	
	Date: June 05, 2026
Georgina Cid, Community Development Manager	
	Date: June 05, 2026
Frankie Kropacek, Community Development Director	
	Date: June 09, 2026
nancy stuparich, Town Attorney	
	Date: June 09, 2026
Amy Baker, Town Clerk	

ORDINANCE 26-10

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING A REZONING OF PROPERTY LOCATED AT 1207 ESTERO BLVD, FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0150D.0050 FROM DOWNTOWN ZONING DISTRICT TO A COMMERCIAL PLANNED DEVELOPMENT WITH 11 DEVIATIONS TO ALLOW FOR A 60-UNIT HOTEL, AND 2,500 SQUARE FEET OF COMMERCIAL RETAIL SPACE AND 46 PARKING SPACES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, TPI-FMB Suites, LLC is the applicant, with Patrick Vanasse and Albert Ambrose serving as agents for the owner of the property located at 1207 Estero Boulevard and identified as STRAP number 19-46-24-W4-0150D.0050 in the Town of Fort Myers Beach, and has filed an application to rezone the property, landward of the 1978 Lee County Coastal Construction Control Line (CCCL) from Downtown Zoning District to Commercial Planned Development (CPD) to allow for the construction of a 60-unit boutique style hotel, 2,500 square feet of commercial retail space and 46 parking spaces with a Floor Area Ratio (FAR) of 2; and

WHEREAS, the property is in the Times Square Mixed-Use Future Land Use Category of the Town of Fort Myers Beach Comprehensive Plan 2045, and is under common control of the applicant, as identified in the public records of Lee County Property Appraiser; and

WHEREAS, the rezoning request was reviewed by the Fort Myers Beach Local Planning Agency at a public hearing on June 16, 2026 before the Town of Fort Myers Beach Local Planning Agency ("LPA"); and

WHEREAS, at the public hearing, the LPA gave full and complete consideration to the requested rezoning, the recommendations by staff, the documents in the record, and the testimony of the property owner and all interested persons, as required by Section 34-85 of the Town Land Development Code and found the request to be **consistent/not** consistent with the Town's Comprehensive Plan and the requirements of the Land Development

Code (“LDC”) and voted ____ to ____ to recommend **approval/approval with conditions/denial**; and

WHEREAS, on ____, 2026, the Town Council held a first reading of the title to the proposed Ordinance 26-10 and gave full and complete consideration to the request of the property owner, 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 approve Ordinance 26-10 and schedule a second reading of the title to Ordinance 26-10 and adoption hearing on ____, 2026; and

WHEREAS, notice of the _____ second reading of the title to Ordinance 26-10 and the adoption hearing was properly noticed and published in the Fort Myers News-Press on the _____ day of _____, 2026, which is more than 10 days prior to the Town Council’s final public hearing on the ____ day of _____, 2026; and

WHEREAS, the property owner has paid all outstanding fees associated with notice, advertisement, and consulting services required by the Town related to this rezoning request; and

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

WHEREAS, Exhibit A is the approved Master Concept Plan (MCP); and

WHEREAS, Exhibit B provides the approved development regulations and the schedule of uses during the development process; and

WHEREAS, Exhibit C provides the requested Deviations; and

WHEREAS, Exhibit D provides a list of conditions if this CPD rezoning is approved; and

WHEREAS, the Town Council finds that this request to rezone the property from the Downtown Zoning District to CPD with a Master Concept Plan (MCP) and 11 deviations to the LDC in order to develop a boutique style hotel and commercial retail as provided herein is a unique application based on the history of the development of the Property, which does not set precedent for future development or rezoning applications; and

WHEREAS, Section 34-216 of the LDC requires a public hearing before the LPA and provides that the LPA’s recommendation to the Town Council must be supported by the rezoning guidelines set forth in [§ 34-85](#) of the LDC as well as compliance with the following criteria:

- a) The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b) The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c) The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.

- d) The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e) Urban services are available and adequate to serve the proposed use.
- f) The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g) The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h) The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i) The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- j) The proposed use or mix of uses is appropriate at the subject location.
- k) Sufficient safeguards for the public interest are provided by the recommended special conditions to the Master Concept Plan and by other applicable regulations.
- l) All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, Section 34-216(4) further provides that “if the local planning agency determines that a proposed condition is insufficient, it may recommend an alternate condition for consideration by the town council” and “if the application includes a schedule of deviations pursuant to [§ 34-212](#)(3) and [34-932](#)(b) of this chapter, the local planning agency's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:

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

WHEREAS, the Town Council finds that this application approves Ordinance 26-10 which is, **consistent/inconsistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** the Application.

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

Section 1. Ratification of Recitals. The Town Council of the Town of Fort Myers Beach, Florida, hereby adopts and ratifies those matters as set forth in the foregoing “WHEREAS”

recitals.

Section 2. The Town Council determines the Applicant met its burden of proof that the request to approve Ordinance 26-10 **does/does not** meet the requirements of the Town's Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the requested application.

Section 3. Repeal of Laws in Conflict. If any ordinances, or parts of ordinances, or if any sections, or parts of sections, of the Ordinances of the Town of Fort Myers Beach, Florida, are in conflict herewith, this Ordinance shall control to the extent of the conflicting provisions.

Section 4. Scrivener's Errors. Sections of this Ordinance may be renumbered or re-lettered and corrections of typographical errors, which do not affect the intent, may be authorized by the Town Manager, or the Town Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Town Clerk.

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance will take effect immediately upon adoption by the Town Council.

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

DULY PASSED AND ADOPTED on this ____ day of ____ 2026.

Dan Allers, Mayor	_____
Scott Safford, Vice Mayor	_____
John McLean, Council Member	_____
John R. King, Council Member	_____
Rebecca Link, Council Member	_____

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

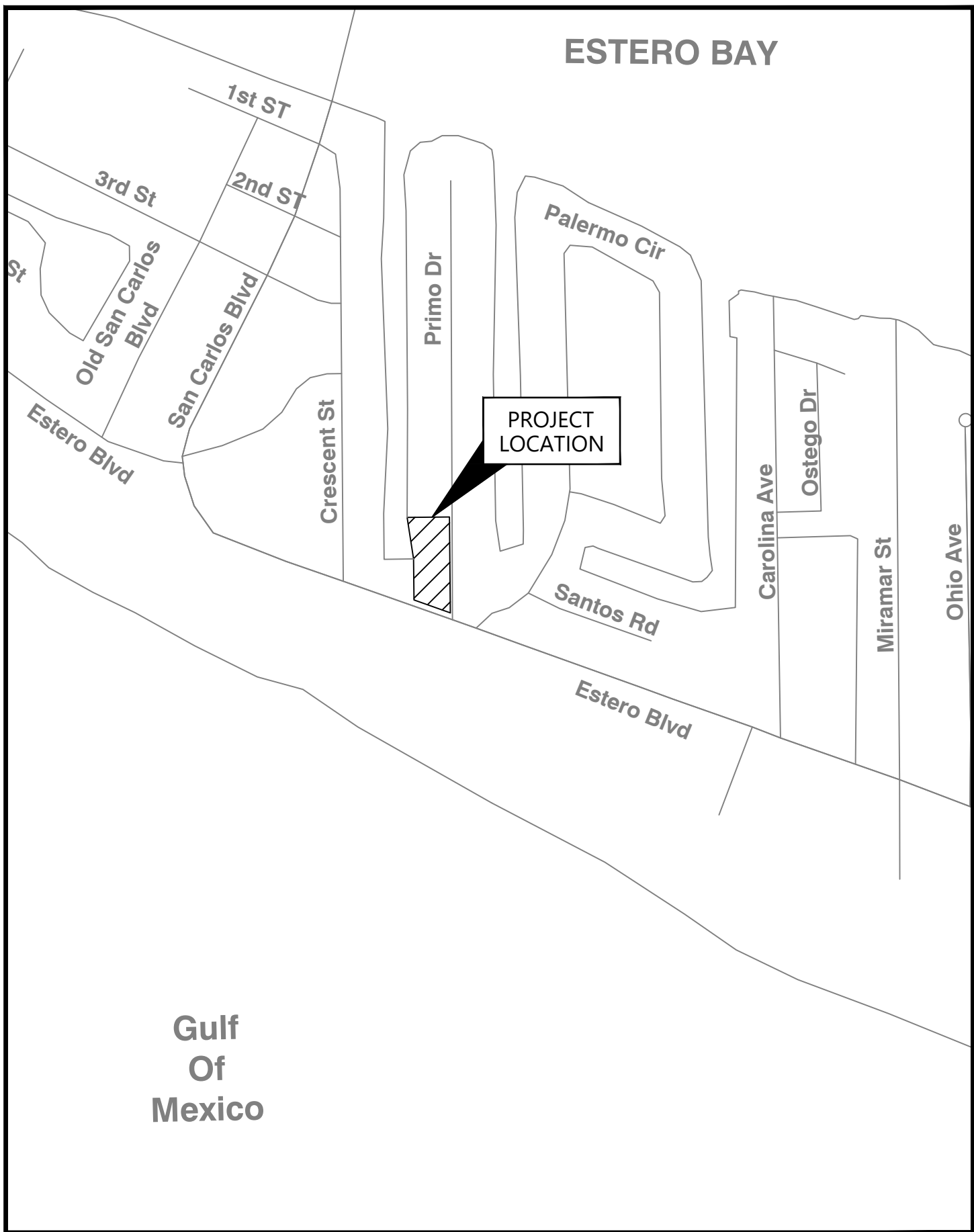
This Ordinance was filed in the Office of the Town Clerk on this ____ day of ____ 2026.

Exhibits:

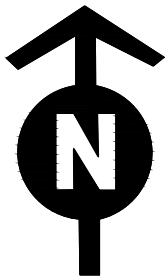
- Exhibit A – Master Concept Plan
- Exhibit B – Schedule of Uses and Development Regulations
- Exhibit C – Requested Deviations
- Exhibit D – Conditions of Approval
- Exhibit E- Architectural Rendering

MASTER CONCEPT PLAN FOR
SILVER SANDS RESORT CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



VICINITY MAP
N.T.S.



SITE LOCATION MAP
N.T.S.

PREPARED BY:



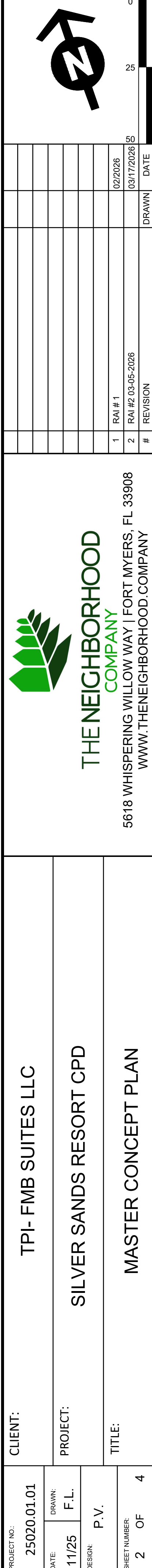
5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

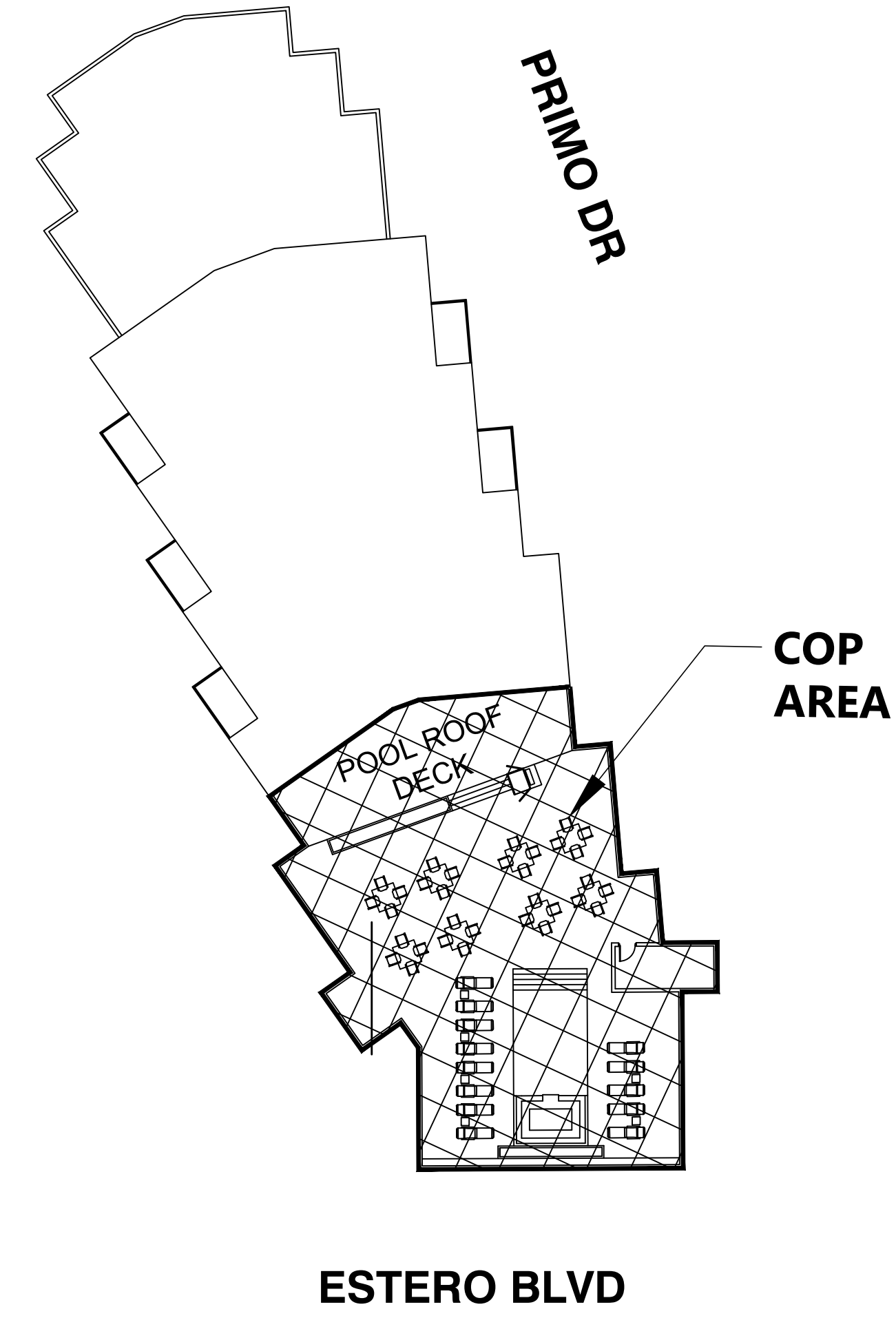
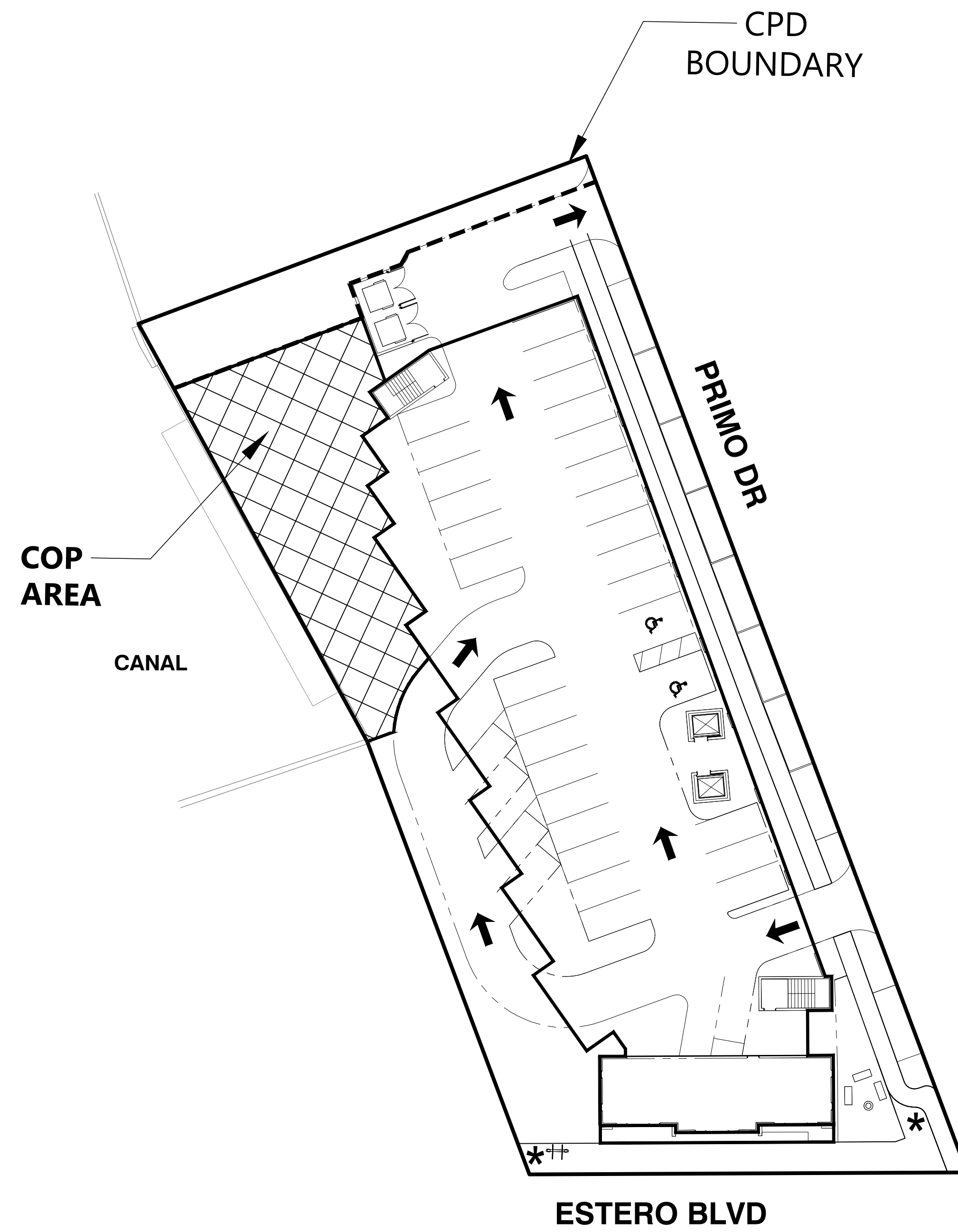
PREPARED FOR:

TPI- FMB SUITES LLC

1207 ESTERO BLVD
FORT MYERS BEACH, FL 33931

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN	
3	NOTES	
4	COP EXHIBIT	
DATE:	PROJECT No.:	SHEET No.:
November, 2025	25020.01.01	1 OF 4





LEGEND	
	- CONSUMPTION ON PREMISES (COP) AREA

[illegible]



THE NEIGHBORHOOD COMPANY

SILVER SANDS RESORT

COMMERCIAL PLANNED DEVELOPMENT (CPD) REZONING

DEVELOPMENT STANDARDS

Minimum Lot Size

Lot Area	± 0.74 acres
Lot Width	± 93 feet
Lot Depth	± 297 feet

Minimum Setbacks Primary Structure*

Primary Street (Estero Blvd.)	10 feet Maximum Build-to Line
Secondary Street (Primo Dr.)	15 feet
Rear Yard	34 feet
Rear Yard Accessory Setback	10 feet
Side Yard (non-waterfront)	15 feet
Side Yard (waterfront)	20 feet

**Roof overhangs can encroach the minimum setback by no more than 3'*

Maximum Zoned Height

± 58' (measured from base flood elevation +3'
of freeboard to mid-point of roof)

Maximum Actual Height

± 70' (measured from grade to peak of roof)

Maximum Stories

6 Stories

Maximum Floor Area Ratio

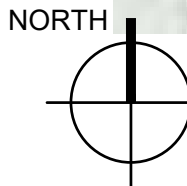
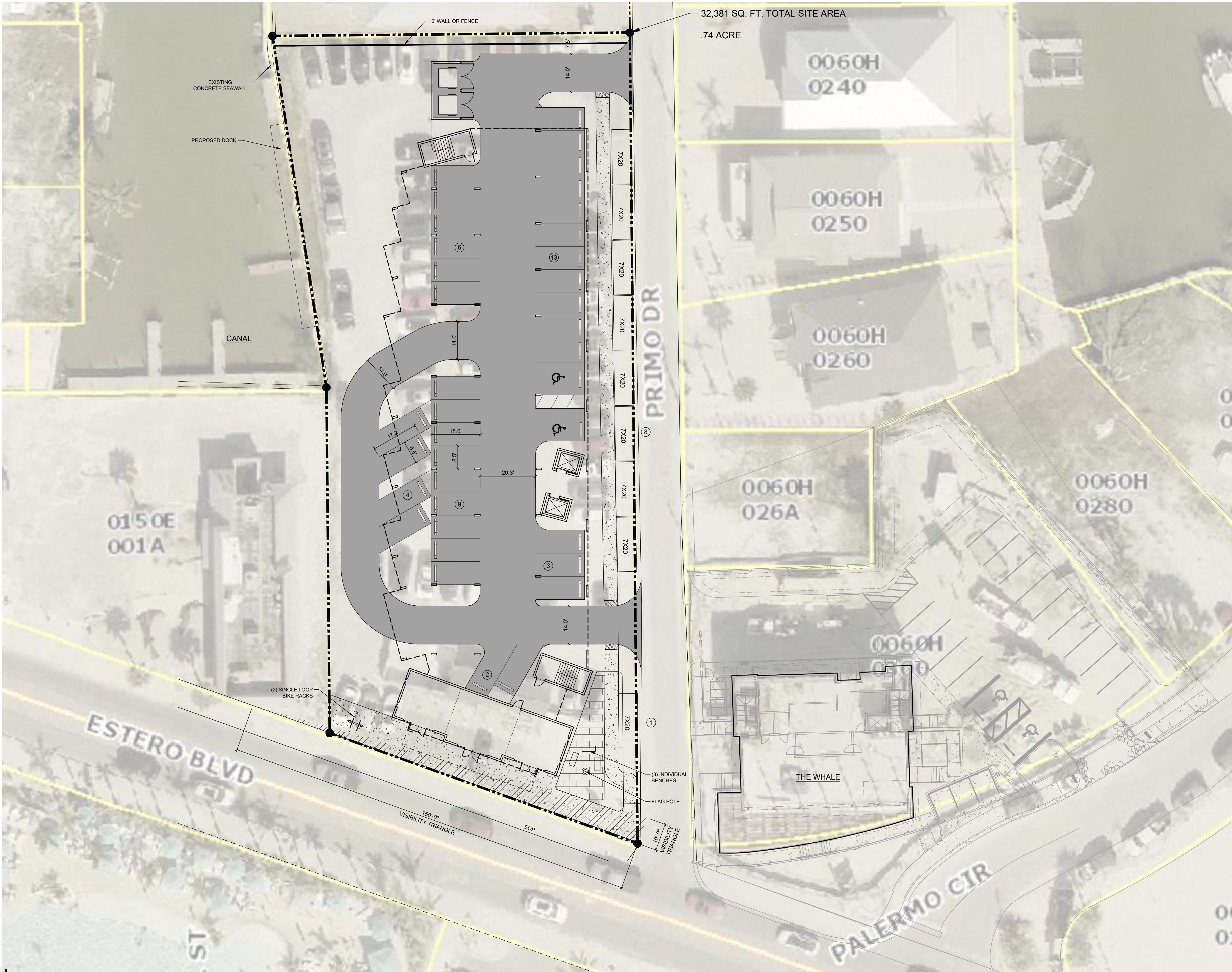
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Exhibit C: List of Deviations

#	LDC Section	Standard Requirement	Requested Deviation
1	Sec. 10-285, Table 10-1	Minimum separation between streets and accessways	Allow driveway separations as shown on MCP
2	Sec. 10-416(d), Table 10-18	15-foot Type C buffer where commercial abuts residential	Allow 7.5-foot Type C buffer along limited north property line area
3	Sec. 34-675(b)(2)	Maximum 30 feet above base flood elevation and 3 stories	Allow maximum zoned height of approximately 58 feet and 6 stories
4	Sec. 10-416(b)(1)b	Building edge plantings required in Downtown district	Allow limited building edge plantings as shown on architectural plans
5	Sec. 30-5(a)(1)a	Maximum 32 square feet of sign area per establishment	Allow two 58-square-foot wall-mounted signs
6	Sec. 34-1803(a)(1) and (a)(2)	Standard unit-to-hotel/motel equivalency factors	Allow equivalency ratio of 12 for maximum 60 hotel units
7	Division 4, Table 34-3	CR street setback of 10 feet	Allow 5-to-10-foot build-to lines along Estero Boulevard
8	Sec. 10-289(d)	Required sidewalk width	Allow 5-foot sidewalk along Primo Drive
9	Secs. 34-994–34-997	Compliance with commercial design standards	Allow architectural elevations/renderings to serve as approved commercial design standards
10	Secs. 34-1174(d)2(a) and 34-1744(b)(4)(d)	Refuse container setback and screening standards	Allow 10-foot rear setback and 8-foot enclosure height
11	Secs. 34-1804(a) and 34-2020	Required parking for hotel, retail, and combined uses	Allow 46 spaces instead of adjusted requirement of approximately 58 spaces

Exhibit D: Condition for Approval

1. A local development order is required prior to any development of the site, in accordance with this planned development approval. Final engineering review at Development Order stage
2. Master concept Plans shall be updated if recommended by the council prior to the signature of the ordinance.
3. All state and local permits, including
4. but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
5. All landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. Final architectural elevations shall be consistent with submitted renderings
8. Compliance with all stated public benefit improvements
9. Transportation improvements (crosswalk, barrier) constructed prior to CO.



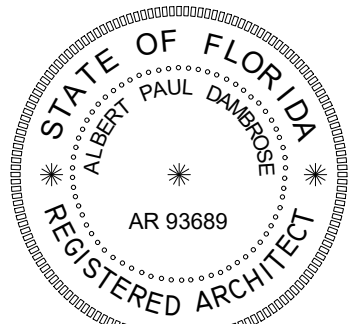
SCHEMATIC SITE & FIRST FLOOR PLAN
46 PARKING SPACES PROVIDED

SCALE: 1/16" = 1'-0"

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A NEW DESIGN FOR:
THE SILVER SANDS RESORT
1207 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 17 NOV 2025

REVISIONS:

- 9 FEBRUARY 2026
- 21 APRIL 2026

SHEET

1

OF 5

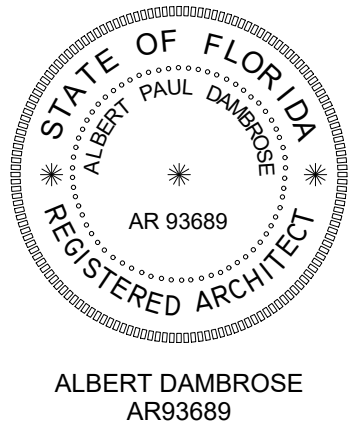


BUILDING AREA ANALYSIS	
FIRST FLOOR (COMMERCIAL)	2,500 SQ. FT.
SECOND FLOOR	13,514 SQ. FT.
THIRD FLOOR	13,514 SQ. FT.
FOURTH FLOOR	13,514 SQ. FT.
FIFTH FLOOR	13,514 SQ. FT.
SIXTH FLOOR / ROOF DECK	5,634 SQ. FT.
TOTAL F.A.R. PROPOSED = 62,190 SQ. FT.	
F.A.R. REQUEST W/ 2.0 RATIO = SITE AREA OF 32,381 SQ. FT. X (2.0) = 64,762 SQ. FT.	
*EXCLUDED FROM F.A.R.	
-UNDER BUILDING PARKING	
-EXTERIOR BALCONIES	
-ROOF TOP POOL & EQUIPMENT DECK	

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A NEW DESIGN FOR:
THE SILVER SANDS RESORT
1207 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



DATE ISSUED: 17 NOV 2025

REVISIONS:

9 FEBRUARY 2026
21 APRIL 2026

SHEET

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OF 5

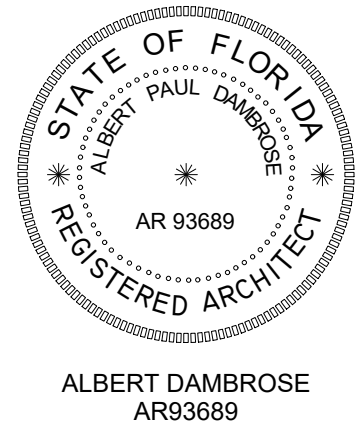


CONCEPT RENDERERS

A NEW DESIGN FOR:
THE SILVER SANDS RESORT

1207 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



DATE ISSUED: 17 NOV 2025

REVISIONS:

9 FEBRUARY 2026
21 APRIL 2026



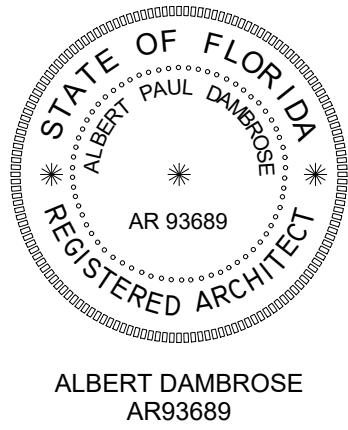
CONCEPT RENDER

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A NEW DESIGN FOR:
THE SILVER SANDS RESORT

1207 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA

CONSULTANT:



DATE ISSUED: 17 NOV 2025

- REVISIONS:
- 9 FEBRUARY 2026
 - 21 APRIL 2026



STREET ELEVATION ALONG ESTERO BLVD.

N.T.S.



STREET ELEVATION ALONG PRIMO DR.

N.T.S.

**A NEW DESIGN FOR:
THE SILVER SANDS RESORT**
1207 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA

CONSULTANT:

DATE ISSUED: 17 NOV 2025

REVISIONS:

09 MARCH 2026
21 APRIL 2026

SHEET

5

OF 5



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

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: CPD 20250286

CASE NAME: 1207 Estero Blvd, rezone the property from Downtown to Commercial Planned Development for the redevelopment of the Silver Sand Resort into a 60-unit boutique style hotel and 2,500 square feet commercial retail space.

LPA

HEARING DATE: June 16, 2026, at 9 AM

STAFF

RECOMMENDATION: NA

**PREPARED/
SUBMITTED BY:** Uma Sarmistha, Ph.D.

I. APPLICATION SUMMARY

Applicant/Owner: TPI-FMB Suites LLC/ Neighborhood Company.

Request: The applicant is requesting to rezone the property from Downtown Zoning to Commercial Planned Development for the redevelopment of Silver Sand Resort.

Physical Address: 1207 Estero Blvd

STRAP #: 19-46-24-W4-0150D.0050

FLU: Commercial (Time Square Mixed use; Comprehensive Plan, 2045)

Zoning: Downtown Zoning District

Proposed Zoning: CPD

Adjacent zoning and land uses:

North: Residential Conservation (RC) / Mixed Residential

South: Downtown/ Commercial

East: Residential Conservation (RC) & Downtown / Mixed Residential

West: Downtown/ Commercial

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, on behalf of TPI-FMB Suites LLC, is requesting rezoning of the property located at 1207 Estero Boulevard from the Downtown zoning district to Commercial Planned Development (CPD) for redevelopment of the historic Silver Sands Resort. The property consists of approximately 0.74 acres and is identified as STRAP #19-46-24-W4-0150D.0050. The Future Land Use designation is Times Square Mixed Use Commercial, and the property is located within the Downtown zoning district.

The historic Silver Sands Resort previously consisted of approximately 22 lodging units, including cottages and villas, along with accessory commercial uses and docks. The site was substantially damaged during Hurricane Ian in 2022.

The proposed application includes a new Master Concept Plan (MCP) for the site consisting of:

- A 60-unit boutique hotel (This is approximately a 173% increase in density (from 22 units to 60 units))
- Approximately 2,500 square feet of ground-floor commercial space,
- 46 on-site parking spaces,
- Rooftop pool and amenity deck,
- Canal-side activation area and dock improvements,
- Streetscape and pedestrian improvements along Estero Boulevard and Primo Drive.

According to Comprehensive plan 2045, the allowed density for Time Square mixed-use development is 6 units per acre, however the MCP is proposing approximately 81 units per acre.

The proposed maximum building height will be approximately 58 feet as measured from the Florida Department of Environmental Protection (FDEP) Lowest Horizontal Structural Member (LHSM), with an overall building height of approximately 70 feet from grade to the roof peak. The building will consist of six stories, including a ground-level parking floor. The maximum height will be limited to the center of the building and that the majority of the structure, front and rear, will be stepped down and limited to 5 stories.

The application includes a request for 11 deviations from the Land Development Code. They are as follows:

1. A deviation from LDC Section 10-285, Table 10-1 – Connection Separation, which requires minimum separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).
2. A deviation from LDC Section 10-416(d) Table 10-18, which requires a 15' Type C buffer when a commercial use abuts a residential use, to allow a 7.5' Type C buffer only where indicated on the MCP and limited to the north property line.
3. A deviation from LDC Section 34-675 (b)(2) which limits height to 30 feet above base flood elevation and is no taller than three (3) stories to allow a maximum zoned height of + 58' and a maximum of six (6) stories.
4. A deviation from LDC Section 10-416(b)(1) b. which requires building edge plantings for properties within the Downtown zoning district to allow limited building edge plantings as shown on Studio AD Architect plans.
5. A deviation for relief from LDC Section 30-5(a)(1)a which allows for a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area to allow two 58 square foot signs.
6. A deviation for relief from LDC Section 34-1803(a)(1), which allows for the conversion of units to hotel/motel guest units per established equivalency factors as allowed per LDC Section 34-1803(a)(2). This deviation would allow an equivalency ratio of 12 and a maximum of 60 guest units.
7. A deviation from LDC Division 4, Table 34-3 for the CR zoning district which requires street setbacks of 10 feet to instead allow for build-to lines of 5 to 10 feet along Estero Boulevard.
8. A deviation for relief from LDC Section 10-289(d) width of sidewalk to allow a five-foot sidewalk along Primo Drive.
9. A deviation for relief from LDC Sections 34-994 – 34-997 Commercial Design Standards to allow the enclosed architectural elevations and renderings to serve as the approved building design and commercial standards for this project.
10. A deviation for relief from LDC Section 34-1174(d)2(a) and 34-1744(b)(4)(d) regarding the location of the refuse container and height of the refuse container screening. The deviation allows the accessory refuse container to be set back a minimum of ten feet (10') from the rear property line and allows the refuse container screening (enclosure) to be a maximum of eight feet (8') in height.
11. A deviation from LDC Sec. 34-1804(a) and Sec. 34-2020, which regulate parking for hotel/motels, non-residential, residential, and combined use developments, to allow a 21% reduction in required parking for projects within the downtown redevelopment district.

Analysis:

According to the historic society, the property at 1207 Estero Blvd was developed as Silver Sand Cottages in early 1921 and more cottages and a heated pool were added in 1970s and 1980. In 2021, the Silver Sands celebrated 100-year anniversary and added 14 cottages, eight-unit villas, two docks and Coney Island Hot Dog refreshment stand. The property was substantially damaged during 2022 Hurricane Ian.

The master concept plan proposes a 60 -unit boutique hotel and 2500 square feet of commercial space with 46 parking spaces including ADA spots located at grade level. Additionally, the planned development also offers a rooftop pool and amenities and canal dock and waterfront activation for hotel guests. Outdoor consumption on premise areas as shown on the Master Concept Plan and are located at ground level by the canal and on the rooftop pool and deck area are limited to hotel guests and occasional private events only.

The CPD rezoning and master concept plan will allow a mixed-use boutique style hotel with higher intensity, density, and height than previously existed on the parcel prior to hurricane Ian. The proposed development requests 60-unit boutique hotel with associated amenities in a 6-story building abutting Estero Blvd. The proposed FAR for the new buildings is 2 (total square footage of 64,468), which is below the Comprehensive Plan Policy 4-C-2 allows a FAR of up to 2.5 in the Pedestrian Commercial Use category. However, the Downtown district allows for FAR of 1.4 (approx. 45,300 sq ft). The proposed building will meet all building regulations and will be designed to be FEMA compliant with dry floodproofing. The proposed development is requesting eleven deviations from the Land Development Code.

Transportation and Parking

The applicant has provided a traffic impact assessment which is under review.

Parking for the site is provided under the building. As per the zoning code, the total parking required for the proposed development will be 86.7 as follows:

- Less than 450 SF (total unit 36 – parking space per unit 1.2) = 43.2 parking space
- Greater than 450 SF (total unit 24 - parking space per unit 1.5) = 36 parking spaces
- Retail 2,500 SF (3 per 1000 SF) 7.5 parking spaces

Total required parking under the land development code is 86.7 space. Under the downtown zoning code, a 33% reduction of parking required is allowed. That leads to a total required parking number to be 58.09. The applicant is asking for a further reduction of 21% (12 parking spaces) as a deviation to allow 46 parking spaces.

The proposed MCP includes enhanced sidewalk (from 10 to 15 foot) sidewalk along Estero Boulevard and 5 feet wide sidewalk along Primo Drive. Along with this there will be amenities such as bicycle racks and seating to enhance the public realm and create a more pedestrian-friendly environment.

Neighborhood Compatibility:

The property housed the Silver Sands cottages since 1921 which was destroyed by Hurricane Ian in 2022. The property is located within the Downtown zoning district approximately 1000 feet from Times Square. The site sits at the intersection of Estero Boulevard and Primo Drive placed within a transitional area between intense commercial use and adjacent residential properties.

The newly proposed Silver Sand Resort will be larger, modern, more intense, elevated and resilient. The residential properties located north of the site along Primo Drive may experience compatibility concerns due to the proposed scale and intensity of development. However, on the South side of the site on Estero Blvd is Margaritaville Resort which is high intensity commercial resort; on east side there is mix of residential and commercial use, while west is the Canal waterfront.

The proposed building incorporates:

- Step-backs and articulation,
- Enhanced pedestrian frontage,
- Streetscape improvements,
- Resilient construction standards,
- Landscaping and buffering,
- Reduced building footprints through vertical construction.

The northern property line adjacent to residential properties includes buffering and setbacks intended to mitigate compatibility impacts.

Staff find the proposed redevelopment generally compatible with the surrounding Downtown context and redevelopment pattern, subject to compliance with the proposed conditions of approval.

Requested Deviations:

1. **A deviation from LDC Section 10-285, Table 10-1 – Connection Separation, which requires minimum separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).**

Justification by Applicant: LDC Section 10-285 requires minimum spacing between access points (250 feet on Estero Boulevard and 125 feet on Primo Drive). The proposed design provides ingress approximately 93 feet from Estero Boulevard and a separated egress approximately 180 feet along Primo Drive. While this does not meet standard spacing requirements, the redesign significantly improves site safety and circulation by eliminating multiple nonconforming access points and removing backing movements onto Estero Boulevard. Consolidated access, internal circulation, and on-site queuing at the hotel entrance reduce potential conflicts and enhance both vehicular and pedestrian safety. As such, the deviation improves overall functionality and supports the health, safety, and welfare of the public.

Staff Response: While the proposed access spacing does not meet the minimum requirements of LDC Section 10-285, staff find the request consistent with the intent of the Code. The redesign eliminates multiple access points and unsafe backing onto Estero Boulevard, consolidates circulation, and provides on-site queuing. Given these improvements and the use of Primo Drive (a local street), the deviation is not expected to adversely impact traffic safety or operations. Therefore, staff supports the deviation, subject to final engineering review.

2. **A deviation from LDC Section 10-416(d) Table 10-18, which requires a 15' Type C buffer when a commercial use abuts a residential use, to allow a 7.5' Type C buffer only where indicated on the MCP and limited to the north property line.**

Justification by Applicant: The proposed deviation reduces the Type C buffer along the northern property line to 7.5 feet at the egress point on Primo Drive. While the buffer width is reduced, all required Type C plantings will be maintained, preserving the intended visual screening. Additionally, the building provides a 39-foot setback, ensuring adequate separation from the adjacent residential property. The deviation accommodates site access while maintaining the buffer's functional intent and will not negatively impact surrounding properties or public welfare.

Staff Response: LDC Section 10-416 requires a 15-foot Type C buffer between commercial and residential uses. The proposed reduction to 7.5 feet is limited to the egress area and maintains all required plantings. Combined with the increased building setback, adequate screening and separation are preserved. The deviation meets the intent of the Code and is not expected to create adverse impacts.

3. **A deviation from LDC Section 34-675 (b)(2) which limits height to 30 feet above base flood elevation and no taller than three (3) stories to allow a maximum zoned height of $\pm$ 58' and a maximum of five (6) stories.**

Justification by Applicant: The Comprehensive Plan (Policy 4-C-4) allows additional height in appropriate locations. The proposed 6-story, 58-foot hotel is consistent with other approved downtown projects, including Margaritaville, Lighthouse Resort, and Arches. While exceeding typical height limits, the building is stepped down to 5 stories at the front and rear to reduce visual impact. The site's location outside the primary bridge viewshed can accommodate the additional height, which supports design features such as a rooftop pool, improved architectural variation, reduced building footprint, and enhanced pedestrian amenities. The deviation is compatible with the downtown context and will not adversely impact surrounding properties.

Staff Response: LDC Section 34-675 limits height to 30 feet and three stories. The proposed 58-foot, six-story building exceeds this standard; however, staff finds it consistent with the intent of the Code and Comprehensive Plan given its Downtown location and similarity to recently approved developments. The building incorporates step-down design to reduce impacts and supports flood compliance and site design improvements. The deviation is not expected to create adverse impacts.

4. **A deviation from LDC Section 10-416(b)(1)b. which requires building edge plantings for properties within the Downtown zoning district to allow limited building edge plantings**

as shown on Studio AD Architect plans.

Justification by Applicant: The Town's LDC requires building edge plantings for all new commercial building in the Downtown district. In order to provide the additional sidewalk width, street furniture and functional access to the ground level retail and lobby space, edge plantings along Estero Boulevard are to be limited to planters as depicted in the architectural renderings provided. Along Primo Drive the site design proposes to provide a 4-foot landscape buffer instead of edge planting. This buffer exceeds code requirements and represents enhanced plantings along the eastern boundary.

Staff Response: The LDC requires building edge plantings in the Downtown district. The applicant proposes planters along Estero Boulevard to allow wider sidewalks and pedestrian amenities, and a 4-foot landscape buffer along Primo Drive. Staff find the request meets the intent of the Code by maintaining landscaping while enhancing the pedestrian environment.

5. **A deviation for relief from LDC Section 30-5(a)(1)a which allows for a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area to allow two 58 square foot signs.**

Justification by Applicant: The requested increase in signage area is to accommodate two architecturally integrated, wall-mounted vertical signs that complement the building design and enhance visibility. These signs avoid conflicts with pedestrian improvements that ground signage would create and contribute to the overall streetscape. The deviation supports cohesive site design and will not adversely impact surrounding properties or public welfare.

Staff Response: LDC Section 30-5 limits signage area to 32 square feet per establishment. The applicant proposes two 58-square-foot wall-mounted signs, exceeding this standard. Staff find the deviation consistent with the intent of the Code, as the signs are integrated into the building architecture, avoid conflicts with pedestrian improvements, and enhance visibility within a high-activity downtown corridor. The signage is not expected to create visual clutter or adverse impacts.

6. **A deviation for relief from LDC Section 34-1803(a)(1), which allows for the conversion of units to hotel/motel guest units per established equivalency factors as allowed per LDC Section 34-1803(a)(2). This deviation would allow an equivalency ratio of 12 and a maximum of 60 guest units.**

Justification by Applicant: The property consists of five platted lots, each eligible for one single-family dwelling, establishing a base density of five units. Pursuant to LDC Section 34-1803(a)(1), these units may be converted to hotel units, and per Section 34-1803(a)(2), the standard

equivalency ratio may be increased under exceptional circumstances with demonstrated public benefit. The exceptional circumstances include the devastation sustained due to Hurricane Ian, the construction requirements mandated through FEMA and Florida Building Code regulations, the high cost of construction, and high interest rates. Additionally, through the planned development process the applicant is proposing the following public benefits:

- a) Pedestrian barrier along Estero boulevard from Primo Drive to Crescent Street, and a crosswalk leading to the public parking lot and beach access
- b) 15-foot enhanced sidewalk along Estero Boulevard
- c) A new 5' public sidewalk along Primo Drive within the subject property
- d) Enhancements to the public realm include landscaping, bicycle parking, and public benches along Estero Boulevard and Primo Drive.
- e) Participation in the Don't Rent a Car (DRaC) program
- f) Bicycles for hotel guests and bicycle racks for the public
- g) Hardened and resilient structures
- h) Positive economic impacts such as ad valorem taxes, bed tax, employment, secondary impacts in supporting other local businesses
- i) Support of FMB Elementary School through informing/educating staff about the school and providing flexible work schedules to facilitate drop-off and pick-up

These exceptional circumstances and public benefits support the 60 hotel units requested. Moreover, this development will benefit the downtown community and local economy and will not adversely impact the public's health, safety, or welfare.

Staff Response: *LDC Section 34-1803 allows increased equivalency ratios under exceptional circumstances as described in the comprehensive plan if approved as a deviation through a planned development rezoning. Before approving such a deviation, the town council must find that:*

- a. All other aspects of the development (height, traffic, intensity of use, etc.) are compatible with the surrounding area;*
- b. The proposal clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan; and*
- c. In no case can equivalency factor increases exceed the maximum intensities allowed by the Fort Myers Beach Comprehensive Plan.*

With the base maximum density of Pedestrian commercials up to six dwelling units per cares, the requested equivalency ratio of 12 (for 60 units) exceeds the standard density.

- 7. A deviation from LDC Division 4, Table 34-3 for the CR zoning district which requires street setbacks of 10 feet to instead allow for build-to lines of 5 to 10 feet along Estero Boulevard.**

Justification by Applicant: Although the site is within the Downtown zoning district, the proposed CPD is evaluated under CR standards. The deviation requests application of Downtown build-to requirements (5–10 feet along Estero Boulevard) in lieu of CR setbacks to promote a pedestrian-oriented streetscape. This approach is consistent with the Comprehensive Plan vision and will not adversely impact surrounding properties or public welfare.

Staff Response: LDC Division 4, Table 34-3 requires a 10-foot street setback within the CR zoning district. The applicant proposes a reduced build-to line of 5 to 10 feet along Estero Boulevard, consistent with Downtown standards. Staff finds the deviation consistent with the intent of the Code, as it promotes a pedestrian-oriented streetscape, enhances street activation, and aligns with the design character of the Downtown area. The reduced setback will not create adverse impacts and support the Comprehensive Plan vision.

8. A deviation for relief from LDC Section 10-289(d) width of sidewalk to allow a five-foot sidewalk along Primo Drive.

Justification by Applicant: The requested deviation reduces the sidewalk width along Primo Drive to five feet due to site constraints and roadway interface conditions. The design maintains continuous pedestrian access and safe circulation while accommodating the overall site layout. The proposed sidewalk improves existing conditions and is appropriate given Primo Drive’s low traffic volumes. The deviation will not adversely impact pedestrian safety or surrounding properties.

Staff Response: LDC Section 10-289(d) establishes minimum sidewalk width requirements to ensure adequate pedestrian safety and mobility. The applicant proposes a reduced sidewalk width of five feet along Primo Drive. Staff find the deviation acceptable, as the sidewalk provides continuous pedestrian connectivity and improves existing conditions where no compliant sidewalk currently exists. Given that Primo Drive is a local street with relatively low traffic volumes, the reduced width is sufficient to accommodate anticipated pedestrian activity.

9. A deviation for relief from LDC Sections 34-994 – 34-997 Commercial Design Standards to allow the enclosed architectural elevations and renderings to serve as the approved building design and commercial standards for this project.

Justification by Applicant: The proposed building is designed to meet the intent of the Commercial Design Standards while addressing site constraints and current building requirements. Although certain elements deviate from specific standards, Section 34-991 allows flexibility in architectural style. The design provides articulated facades, visual interest, and a cohesive contemporary coastal character, consistent with the quality and intent of the LDC for commercial development.

Staff Response: LDC Sections 34-994 through 34-997 require commercial buildings to meet

specific design standards for façade articulation, materials, and pedestrian orientation. The applicant proposes to use the submitted architectural plans in lieu of strict compliance. Staff finds the design meets the intent of the Code by providing articulated façades, visual interest, and a pedestrian-oriented streetscape. The contemporary coastal architecture is compatible with the Downtown character.

- 10. A deviation for relief from LDC Section 34-1174(d)2(a) and 34-1744(b)(4)(d) regarding the location of the refuse container and height of the refuse container screening. The deviation allows the accessory refuse container to be set back a minimum of ten feet (10') from the rear property line and allows the refuse container screening (enclosure) to be a maximum of eight feet (8') in height.**

Justification by Applicant: The refuse container is located at the rear of the site, adjacent to the building and near Primo Drive access for efficient service access. It is screened from adjacent properties by a 7.5-foot Type C buffer with a 6-foot wall or fence. The proposed increase in enclosure height to 8 feet provides enhanced screening. This design improves functionality and will not adversely impact surrounding properties or public welfare.

Staff Response: LDC Sections 34-1174(d)2(a) and 34-1744(b)(4)(d) regulate refuse container location and screening. The applicant proposes a reduced setback and an increased enclosure height to 8 feet. Staff find the rear location and enhanced screening to meet the intent of the Code.

- 11. A deviation from LDC Sec. 34-1804(a) and Sec. 34-2020, which regulate parking for hotel/motels, non-residential, residential, and combined use developments, to allow a 21% reduction in required parking for projects within the downtown redevelopment district.**

Justification by Applicant: LDC Sections 34-1804(a) and 34-2020 requires the total allows a 21% reduction in required parking, providing 46 spaces where 58 are required. This reduction is appropriate due to the project's location within a highly walkable Downtown "park-once" district, its proximity to public transit, and the availability of nearby public and private parking. The project also supports alternative transportation through bicycle amenities, on-site bike parking, and enhanced pedestrian infrastructure along Estero Boulevard.

Staff Response: While the proposed parking supply does not meet the minimum requirements of LDC Sections 34-1804(a) and 34-2020, staff notes that the applicant has submitted a traffic impact assessment. Based on the proposed development program, total parking demand is calculated at 86.7 spaces, including 43.2 spaces for units less than 450 square feet, 36 spaces for units greater than 450 square feet, and 7.5 spaces for 2,500 square feet of retail. Application of the 33 percent Downtown reduction results in a requirement of 56.7 spaces; however, the proposal provides 46 spaces and one bicycle rack, requiring an additional deviation. The subject property is located within the Downtown/Times Square area, which is characterized by constrained site conditions, limited on-site

parking capacity, and reliance on shared public and private parking resources. The Master Concept Plan includes pedestrian enhancements such as a widened sidewalk along Estero Boulevard (10 to 15 feet), a 5-foot sidewalk along Primo Drive, and bicycle amenities. The Downtown district continues to experience high parking demand during peak periods. Staff further notes that the Town Council has emphasized the importance of maintaining adequate parking supply within the Downtown area. The Applicant has indicated that additional parking management strategies may be evaluated at the time of Development Order review. With regards to the location of the project, staff do not recommend the reduction of the parking requirement.

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.

(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 exists change or changing conditions which make approval of the request appropriate.

Staff response: The previous structure was destroyed by Hurricane Ian and the site is open for redevelopment. The property owner has the ability to develop the property under a post-disaster policy and LDC regulations.

The 2045 Comprehensive Plan also includes several policy directives: allowing for master planned developments to redevelop with density, intensity and height greater than standard future land use categories in exchange for public benefits. However, the Public Benefit Ordinance has not adopted by the Town when the application was submitted.

Additionally, the 2045 Comprehensive plan also suggests a huma scale development for FMB.

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

Staff response: The intent of the chapter is listed in 34-1 as:

The purpose of this chapter is to encourage and promote, in accordance with present and future needs, the safety, health, order, convenience, prosperity, and general welfare of the citizens of the Town of Fort Myers Beach, to recognize and promote real property rights, and to provide:

(1) For efficiency and economy in the process of development;

(2) For the appropriate and best use of land;

(3) For preservation, protection, development, and conservation of the historical and natural resources of land, water and air;

(4) For convenience of traffic and circulation of people and goods;

(5) For the use and occupancy of buildings;

(6) For healthful and convenient distribution of population;

(7) For adequate public utilities and facilities;

(8) For promotion of the amenities of beauty and visual interest;

(9) For protection of the character and maintenance of the stability of residential and business

areas; and

(10) For development in accordance with the Fort Myers Beach Comprehensive Plan.

(4) The testimony of any applicant.

Staff response: Satisfactory

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

(6) The testimony of the public.

Staff response: Satisfactory

(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 proposed development is not in compliance with the intensity of the district. The use is permitted use by right in CPD. The proposed site development will be more compliant with the site development requirements than the previous development. Additionally, the new structure will be designed to current building and flood requirements which is supported by the comprehensive plan.

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

Staff response: The proposed development will meet performance standards set forth in 34-2031.

(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, and the applicant needs to submit letters of availability from appropriate departments.

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

Staff response: The request will have no significant adverse impact is anticipated, subject to compliance with all applicable environmental regulations.

(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 use has been in existence in this location for many years. It is not anticipated to have any detrimental impact on existing or planned 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 use with 60 hotel unit and 2500 sq feet of retail use in this location will place an additional burden on the transportation network or other facilities and services. However, the applicant has proposed mitigation measures as part of the CPD application..

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

(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 use for the CPD complies with the Comprehensive Plan 2045.

(2) This chapter.

Staff response: The proposed uses comply with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

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

§ 34-216 Public hearing

(a) *Hearing before the local planning agency.* After the application is completed, the application will be scheduled for a public hearing before the local planning agency.

(1) At the public hearing the local planning agency will consider the application in accordance with article II of this chapter.

(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: The use of the property for Silver Sand resort existed on this site previously, at a lower intensity and density.

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

Staff Response: Satisfactory. The proposed use provided in the schedule of uses are consistent with Land Development Code. Sufficient safeguards are provided for the public's interest.

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: All conditions are related to the impact on public interest.

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. Objective 1-A Estero Boulevard - Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.

POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

Staff response: Staff finds the proposed development consistent with Objective 1-A and Policy 1-A-1 of the Fort Myers Beach Comprehensive Plan. The project enhances walkability through an enhanced sidewalk along Estero Boulevard and a new 5-foot sidewalk along Primo Drive, supported by pedestrian-scaled design features. Traffic safety is improved by consolidating access to a single point on Primo Drive, reducing conflicts and eliminating backing onto Estero Boulevard. Proposed pedestrian improvements, including a crosswalk and decorative barrier (subject to approval), are intended to guide pedestrian movement and enhance safety.

2. Goal 4/ Objective 4-A Policies 4-A-1 and 4-A-2 maintain the small-town character of Fort Myers Beach and pedestrian oriented public realm and maintain human scale and maintain vibrant economy and walkable area, pedestrian oriented public realm.

Staff response: Staff finds the proposed development consistent with Policies 4-A-1 and 4-A-2 of the Fort Myers Beach Comprehensive Plan, as it maintains a human-scale design and enhances the pedestrian-oriented public realm. The project provides sidewalks, pedestrian plaza, bicycle parking, and improved connectivity to beach access, supporting walkability and corridor continuity. Additional improvements, including a crosswalk and decorative barrier (subject to agency approval), are intended to enhance pedestrian safety and reinforce the Downtown pedestrian network.

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

Staff response: The proposed building will be a 5-story building. The request for additional heights is proposed as part of the planned development rezoning.

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

Staff response: Not applicable.

5. OBJECTIVE 4-D on post-disaster build back.

Staff response: Staff finds the proposed development consistent with Objective 4-D (Post-Disaster Redevelopment), as it incorporates resilient construction and complies with applicable federal, state, and local building standards.

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

Staff response: Staff finds the project consistent with applicable policies, as it enhances the pedestrian environment with sidewalk and amenities, improves safety by eliminating backing onto Estero Boulevard, and is not expected to adversely impact on the transportation network based on the Traffic Impact Statement.

Public Benefits

The Silver Sands Resort will provide numerous public benefits to the Town of Fort Myers Beach, its residents, and visitors. Public benefits being provided include the following:

1. Pedestrian barrier along Estero Boulevard from Primo to Crescent Streets, and a crosswalk leading to the public parking lot and beach access,
2. 15-foot enhanced sidewalk along Estero Boulevard,
3. Enhancements to the public realm including landscaping, bicycle parking, and public benches along Estero Boulevard and Primo Drive,
4. Participation in the Don't Rent a Car (DRaC) program,
5. Bicycles for hotel guests and bicycle racks for the public,
6. Hardened and resilient structures,
7. Positive economic impacts including ad valorem taxes, bed tax, employment, and secondary impacts in supporting local businesses,
8. Support of the FMB Elementary School through informing/educating staff about the school and providing flexible work schedules to facilitate drop-off and pick-up,
9. Helping redevelop and revitalize the downtown district with a quality boutique hotel developed and managed by TPI - a local and proven entity.

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and

Staff response: The requested deviations allow the development of the site as proposed.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

Staff response: With enhance sidewalks and improvement, the CPD application is promoting safety and welfare.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response:

With regards to the location of the project, staff do not recommend the reduction of the parking requirement.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: NA

RECOMMENDATION and CONDITIONS OF APPROVAL

Staff find that the CPD 20250286 with 11 deviations, does not meet the criteria set forth in Sec. 34-

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85(b) and (c) and 34-216(2) and FMB Comprehensive plan 2045. If approved, the staff recommends the following conditions.

1. A local development order is required prior to any development of the site, in accordance with this planned development approval. Final engineering review at Development Order stage
2. Master concept Plans shall be updated if recommended by the council prior to the signature of the ordinance.
3. 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.
4. All landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
5. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
6. Final architectural elevations shall be consistent with submitted renderings
7. Compliance with all stated public benefit improvements.
8. Transportation improvements (crosswalk, barrier sidewalks) constructed prior to CO.
9. Final parking management strategies, including valet or shared parking agreements, if necessary, shall be evaluated during Development Order review.

