



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Monday, April 5, 2021

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS AND REPORTS**
 - A. Public Safety Committee
- VIII. APPROVAL OF MINUTES**
 - A. March 15, 2021 Town Council
- IX. CONSENT AGENDA**
 - A. Utilities Risk & Resiliency Assessment and Emergency Response Plan.
Accept the Selection Advisory Committee's ranking and authorize the Town Manager to execute Supplemental Task Authorization #2 with Axis Infrastructure in the not to exceed amount of \$49,700 for the creation of an Utilities Risk and Resilience Assessment and Emergency Response Plan in response to LOI-21-13-UT.
 - B. Comp Plan / LDC Updates
Allocate and appropriate funds and approve Supplemental Task Authorization #2, in the amount of \$142,500 for completion of the Comprehensive Plan and Land Development Code updates, and authorize the Town Manager to execute the Supplemental Task Authorization with The Corradino Group.
- X. PUBLIC HEARINGS**

- A. ORDINANCE 21-03; Sea Turtle Conservation
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION”, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Second reading and final adoption.
- B. Ordinance 21-02: Myerside CPD Rezoning (DCI 2020-0009)
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE (“LDC”); PROVIDING FOR SCRIVENER’S ERRORS AND AN EFFECTIVE DATE. Second reading and final adoption.

XI. ADMINISTRATIVE AGENDA

- A. Dekeyser Street Performer Appeal
Appeal of Revocation of Street Performer Permit

XII. FINAL PUBLIC COMMENT

XIII. TOWN MANAGER'S ITEMS

XIV. TOWN ATTORNEY'S ITEMS

- A. Resolution 21-17, STR Pre-Exemption Objection

XV. COUNCILMEMBERS ITEMS AND REPORTS

XVI. ADJOURNMENT

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

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

	For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.
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In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

Public Safety Committee Report to Council April 2021

- 1) Review of Safety Issues and concerns
 - a. Survey – Residents, Seasonal residents, Businesses, Visitors
 - b. Prioritize Pedestrian Safety, Homeless persons, Bike safety (bike lanes), policing, street lighting, neighborhood safety, Wellness checks
 - c. Review police and fire monthly reports
- 2) Foot of Matanzas Bridge crosswalk design
 - a. Letter sent to Council describing zero crosswalk concept, available to clarify
- 3) Trolley/Tram Shelter
 - a. Code Blue – pending vendor quote for Council decision
 - b. Internal 'traffic' camera with visibility to shelter
- 4) Sidewalk markings
 - a. Quote for painting to discuss interlocal with County
- 5) Bike lanes
 - a. Markings – demo on North Estero
- 6) Bike lights and bells
 - a. Lights have been ordered -recommend initial distribution at a bike safety event with Sherriff and/or Fire
 - b. Bells awaiting determination is bells selected will meet legal requirement for audio device



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes**Monday, March 15, 2021****9:00 AM**

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Allers moved to approve the final agenda; second by Vice Mayor Hosafros.

Motion carried unanimously.

V. PUBLIC COMMENT

Larry Wynberg from Advanced Disposal requested a time waiver for trash, recycling and horticulture pickup due to seasonal traffic and construction. He requested a 6:00 a.m. start and a discussion with Town Council concerning upcoming issues.

Larry Wood, President of Waterside Master Association, stated that the new Manatee Zone signs were installed last week. He thanked Environmental Project Manager Chadd Chustz, Council Member Allers, Commissioner Sandelli and others. He noted the majority of boats were moving slower thanks to the signs.

VI. PROCLAMATIONS**A. Donate Life Month****Donate Life Month**

Mayor Murphy read the Proclamation.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Hosafros stated that the Fort Myers Beach Community Foundation scholarships were available to anyone who wished to pursue post-high school education. She noted that she had applications and they were available on the website. She encouraged residents to apply.

Council Member Atterholt provided an update regarding the clean water initiative. He encouraged everyone to write letters.

Council Member Veach recognized Sue Morris and the Waterside communities for their year-long effort to get the boat speed lowered.

No items from other members.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

Steve Johnson, Chair of the Marine Resources Task Force (MRTF), reported that MRTF reviewed the Sea Turtle Ordinance and suggested changes regarding interior lighting. He addressed comments made at the last M&P Session. MRTF Member Jennifer Rusk described the educational outreach program called Ask Me Pop-Up booths. She noted they were invited to the Mermaid Festival at Lovers Key on April 2-4, 2021 and provided a list of organizations and volunteers.

IX. APPROVAL OF MINUTES**A. Draft March 1, 2021 minutes**

Vice Mayor Hosafros moved to approve the minutes; second by Council Member Atterholt.

Motion carried unanimously.

B. Draft March 4, 2021 minutes

Vice Mayor Hosafros moved to approve the minutes; second by Council Member Atterholt.

Motion carried unanimously.

X. PUBLIC HEARINGS**A. ORDINANCE NO. 21-03 Sea Turtle Conservation**

First Reading and Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION”, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on April 5, 2021 at 9:00 a.m.

Mayor Murphy read the title of the ordinance.

Project Manager Chustz noted a typo in Sec. 32-105 (e) on packet page 27. He indicated that new construction was clarified. Council Member Allers discussed lighting control systems. Town Manager Hernstadt commented that they would contact FWCC (Fish & Wildlife Conservation Commission) for their input on lighting systems.

No public comment.

Council Member Veach moved to schedule a second hearing on April 5, 2021; second by Vice Mayor Hosafros.

Motion carried unanimously.

B. Ordinance 21-01; Chapter 6 and 34 of Land Development Code

Second Reading and Final Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 6 MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS OF THE LAND DEVELOPMENT CODE; AMENDING CHAPTER 34-1180 CREATING GARAGE DESIGN AND LOCATION STANDARDS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING AND AN EFFECTIVE DATE.

Mayor Murphy read the title of the ordinance.

Community Development Director Jason Green reviewed the change that allowed three garages. Town Attorney Herin, Jr. noted the hearing was properly advertised.

No public comment.

Council Member Allers moved to approve the ordinance; second by Council Member Veach

Motion carried unanimously by roll call vote.

C. Ordinance 20-18; Water Supply Facilities Work Plan

Second Reading and Final Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING AMENDMENTS TO THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN UTILITIES ELEMENT TO UPDATE DATA AND ANALYSIS AND THE GOALS, OBJECTIVES, AND POLICIES RELATED TO WATER SUPPLY PLANNING REQUIREMENTS OF CHAPTER 163, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Murphy read the title of the ordinance. Town Attorney Herin, Jr. noted the hearing was properly advertised.

Director Green stated all entities involved approved the language. Council Member Atterholt questioned whether a backup plan was in place if the water supply from Fort Myers became compromised. Town Manager Hernstadt replied affirmatively.

No public comment.

Vice Mayor Hosafros moved to approve Ordinance 20-18; second by Council Member Veach.

Motion carried unanimously by roll call vote.

XI. ADMINISTRATIVE AGENDA

A. AARP Community Challenge Application Authorization

Authorize the Town Manager to apply for the AARP Community Challenge grant for \$91,000 to be used for Bayside Park's Redevelopment.

Council Member Veach moved to authorize the Town Manager to apply for the grant; second by Vice Mayor Hosafros.

Motion carried unanimously.

B. Lighting Study Stakeholder Meeting Assignment of Representatives To select/appoint members to represent the community as "Stakeholders" for a meeting to guide the Lighting Study.

Town Manager Hernstadt reviewed why members were being selected. Council Member Veach noted that Leah Gregg was interested as a member of the public. Council Member Allers stated that Jim Hockett was interested. Mayor Murphy suggested contacting Chamber of Commerce Director Jacki Lyszak for her input. He had another person in mind who would represent hotels and rentals. Council Members agreed to move forward.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt reported that they would receive approximately \$3 million from the American Rescue Plan. He addressed the request for an earlier pickup from Advanced Disposal. He noted that members of the community complained because they were unable to complete their routes. Mayor Murphy questioned whether the backup beepers could be disabled. Mr. Wineberg replied negatively. Vice Mayor Hosafros questioned whether they could waive enforcement of the current ordinance until Easter and modify the ordinance to grant an extra 1/2 hour from New Year's Day to Easter. Town Manager Hernstadt addressed their contract and preferred to deal with it on an exception basis.

Vice Mayor Hosafros moved to allow Advanced Disposal to pick up trash at 6:00 a.m. for 30 days from today; second by Mayor Murphy. Motion carried unanimously.

Council Member Atterholt questioned the status of the landscape on Estero Blvd. Town Manager Hernstadt replied that they were installing temporary sod to prevent a dropoff from the sidewalk to the curb. He reported that they had not received the landscape money from the County yet.

A. Bicycle Signage

Town Manager Hernstadt provided a map of where there were no bicycle lanes on Estero Blvd. He noted they would install bicycle signs in the area if approved. Council Member Veach questioned whether they could install a "wrong way" sign on the back of the post so bicyclists would not travel against traffic. Town Manager Hernstadt replied that they would look into stock signs.

B. Beach Bucket Foundation

Town Manager Hernstadt reviewed a request to clean up the beach. Council Member Veach recommended that MRTF review alternatives and make a presentation to Council. Vice Mayor Hosafros noted they turned down another group due to their advertising. She suggested limiting signs and supported MRTF reviewing options. Town Manager Hernstadt will give it to MRTF.

XIV. TOWN ATTORNEY'S ITEMS

No items.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Veach described the Palermo-Primo native plant project in front of The Whale in the Town's right-of-way. He requested funds for excavation and dirt so plants could be installed. Consensus was reached to support the request. Council Member Atterholt noted that a memorial plaque for Town employee Joe Lyszak was no longer on a Key Estero Plaza bench. He questioned whether they could add another plaque to a different bench. Vice Mayor Hosafros supported his request. Town Manager Hernstadt brought up acknowledging other employees who were no longer with them. Council Member Atterholt agreed with his idea.

Mayor Murphy was in favor of discussing newspapers left in driveways at a future M&P Session. Vice Mayor Hosafros agreed.

Council Member Allers questioned whether Council Members were interested in joining Sanibel by sending a thank you letter to party members and delegates who worked on the short-term rental bill to protect their grandfather status. Vice Mayor Hosafros noted that Sanibel did not reply to their earlier inquiries. Council Member Allers stated that he would contact Vice Mayor Smith for details. He questioned installing signs to prohibit electric bikes on sidewalks and requested permission to discuss bicycle safety issues with the Sheriff's office. He received support to move forward. Vice Mayor Hosafros suggested he contact Darla Laturno from Bike Walk Lee and Mayor Murphy suggested he contact Dan Moser. Council Member Allers noted that the new logo looked good.

XVI. ADJOURNMENT

Vice Mayor Hosafros moved to adjourn; second by Council Member Allers. The meeting was adjourned at 10:20 a.m.

1. Requested Motion:

Meeting Date: April 5, 2021

Accept the Selection Advisory Committee's ranking and authorize the Town Manager to execute Supplemental Task Authorization #2 with Axis Infrastructure in the not to exceed amount of \$49,700 for the creation of an Utilities Risk and Resilience Assessment and Emergency Response Plan in response to LOI-21-13-UT.

Why the action is necessary:

To authorize the Town Manager to execute an agreement with Axis Infrastructure.

What the action accomplishes:

Creates a Risk and Resilience Assessment (RRA) and develops an Emergency Response Plan (ERP) as required by the American Water Association Act of 2018 (AWIA) compliance.

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

LOI-21-13-UT was advertised in February, 2021 for assistance with the creation of a Risk & Resiliency Assessment and Emergency Response Plan to qualified firms under the Water Resources category. Three Letters of Interest were received from ADA Engineering, Tetra Tech, and Axis Infrastructure. A selection committee met on March 24th, 2021 and made a motion to rank Axis Infrastructure highest of the three submittals. Axis Infrastructure then submitted the attached proposal.

Attachments:

1. STA #2 Axis Infrastructure RRA
2. SAC LOI-21-13-UT DRAFT Minutes

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Approve

8. Recommended Approval:

Christy Cory, Utilities Director
Christy Cory, Utilities Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/31/2021
Approved - 3/31/2021
Approved - 3/31/2021
Approved - 3/31/2021
Final Approval - 3/31/2021

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: STA # 2

CONTRACT/PROJECT NAME: Risk & Resiliency Assessment and Emergency Response Plan

CONSULTANT: Axis Infrastructure

PROJECT NO.: _____

SOLICIT NO.: LOI-21-13-UT

CONTRACT NO.: RFQ-20-22-AD_

REQUESTED BY: Christy Cory, Utilities Director

DATE OF REQUEST: 04/05/2021

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: April 5, 2021

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: April 5, 2021

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: April 5, 2021

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: April 5, 2021

It is understood and agreed that the acceptance of this modification by the
CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____ Date: _____ By: _____ Date: _____
Department Director Contracts Manager

ACCEPTED: AXIS INFRASTRUCTURE

By: _____ Date: _____
Consultant/Provider

TOWN APPROVAL:

By: _____ Date: _____ By: _____ Date: _____
Town Manager Town Attorney

Cost of STA: \$ 49,700.00

Date: April 5, 2021

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Risk & Resiliency Assessment and Emergency Response Plan

Overview

STA NO. 2: Risk & Resiliency Assessment and Emergency Response Plan – April 2021

The following services will be provided by Axis Infrastructure:

SCOPE OF WORK

Our team will provide the following services under this Agreement for the development of an AWIA compliant RRA of the Town's drinking water infrastructure.

Task 1 – Risk and Resilience Assessment (RRA)

Our team will conduct a RRA compliant with AWIA Section 2013 for the City's water system utilizing aspects of the U.S. Environmental Protection Agency's (EPA's) Automated Risk Assessment Methodology (ARAM-W) and American Water Works Association (AWWA's) J100, G300, G430 and G440 methodology. This will allow the City to identify vulnerabilities to natural hazards or malevolent acts, and simultaneously meet baseline RRA compliance requirements for communities serving a population of 3,300 to 49,999.

The main components of the assessment methodology include characterization of the water system, prioritization of facilities based on relative importance, assessment of the likelihood and type of vulnerability and related threat, an analysis of the consequences resulting from undesired events, and assessment of the effectiveness of current protection systems. The assessment will also include a Cybersecurity Assessment utilizing AWWA's Cybersecurity Guidance and Assessment Tool.

There will be one kick-off meeting and up to two workshops with our team and Town staff to obtain information to complete the RRA.

We will prepare a draft electronic copy of the RRA for review and comment. Our team will address one round of comments and provide a final updated electronic copy of the report. This Agreement does not include engineering services for a Quantitative and Countermeasures Analysis or the development of recommendations for risk mitigation. These items are not required for certification of the RRA to EPA. If the Town would like to develop these analyses, we can perform them under separate agreement or amendment to this contract.

Task 2 – Emergency Response Plan (ERP) Update

We will provide an update to the Town's existing ERP to bring it into compliance with AWIA requirements.

We will prepare a draft updated electronic copy of the ERP for review and comment. In addition to updating any roles and responsibilities that have changed since the last revision, the updated ERP will incorporate components required by AWIA for EPA Certification. Additional requirements include, but are not limited to:

- Incorporation of risks as identified in the RRA
- Cybersecurity-specific Incident Specific Response Protocols
- Hazard-specific Incident Specific Response Protocols
- AWIA-specific language on available emergency water supplies
- AWIA-specific language on flood barriers
- AWIA-specific language on relocation of intake structures
- AWIA-specific language on response roles

All changes and modifications to the ERP will be clearly identified. Upon receipt of comments and approval of the draft ERP, we will finalize the document and provide both hard copy updates and electronic files necessary to prepare additional copies of the ERP.

COMPENSATION

Woodard & Curran proposes to complete the scope of services as outlined above for the lump sum cost presented below. Axis will be invoiced monthly on a percent complete basis.

Task #	Task Description	Lump Sum Budget
1	Risk and Resilience Assessment (RRA)	\$26,800
2	Emergency Response Plan (ERP) Update	\$22,900
	Total	\$49,700

Total Cost (of Job): *\$49,700.00*

EXHIBIT BDate: April 5, 2021COMPENSATION AND METHOD OF PAYMENT FOR**Risk & Resiliency Assessment and Emergency Response Plan – April 2021**Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	Risk and Resilience Assessment (RRA)	\$26,800.00	NTE	WIPP
#2	Emergency Response Plan (ERP) Update	\$22,900.00	NTE	WIPP
TOTAL (Unless list is continued on next page)		\$49,700.00	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated April 5, 2021, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto April 5, 2021 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: April 5, 2021

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR Risk & Resiliency
Assessment and Emergency Response Plan – April 2021

Consultant or Sub-consultant Name: Axis Infrastructure
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule As Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: April 5, 2021

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR Risk & Resiliency
Assessment and Emergency Response Plan – April 2021

CONSULTANT OR SUB-CONSULTANT NAME: Axis Infrastructure
(A separate Attachment No. 2 should be included for each Sub-Consultant)

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: April 5, 2021

TIME AND SCHEDULE OF PERFORMANCE FOR

Risk & Resiliency Assessment and Emergency Response Plan – April 2021

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1	Risk and Resilience Assessment (RRA)	86 days (June 30 Deadline)	86 Days
#2	Emergency Response Plan (ERP) Update	270 days (December 31 Deadline)	270 days

EXHIBIT D

Date: April 5, 2021

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR

Risk & Resiliency Assessment and Emergency Response Plan – April 2021

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
	NONE					



Christy Cory
Utilities Director
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL

Re: Proposal for AWIA Compliance Assistance - Risk & Resilience Assessment and Emergency Response Plan Update

Dear Ms. Cory:

Our team, Axis Infrastructure and Woodard & Curran, Inc., appreciates the opportunity to submit a proposal to Fort Myers Beach for engineering services to assist with completing a Risk and Resilience Assessment (RRA) and Emergency Response Plan (ERP) update for the Town of Fort Myers Beach, FL in compliance with the America's Water Infrastructure Act of 2018 (AWIA).

This Agreement will be completed in accordance with the Scope of Work, Compensation, Schedule, and Standard Terms and Conditions as defined herein.

SCOPE OF WORK

Our team will provide the following services under this Agreement for the development of an AWIA compliant RRA of the Town's drinking water infrastructure.

Task 1 – Risk and Resilience Assessment (RRA)

Our team will conduct a RRA compliant with AWIA Section 2013 for the City's water system utilizing aspects of the U.S. Environmental Protection Agency's (EPA's) Automated Risk Assessment Methodology (ARAM-W) and American Water Works Association (AWWA's) J100, G300, G430 and G440 methodology. This will allow the City to identify vulnerabilities to natural hazards or malevolent acts, and simultaneously meet baseline RRA compliance requirements for communities serving a population of 3,300 to 49,999.

The main components of the assessment methodology include characterization of the water system, prioritization of facilities based on relative importance, assessment of the likelihood and type of vulnerability and related threat, an analysis of the consequences resulting from undesired events, and assessment of the effectiveness of current protection systems. The assessment will also include a Cybersecurity Assessment utilizing AWWA's Cybersecurity Guidance and Assessment Tool.

There will be one kick-off meeting and up to two workshops with our team and Town staff to obtain information to complete the RRA.

We will prepare a draft electronic copy of the RRA for review and comment. Our team will address one round of comments and provide a final updated electronic copy of the report.



This Agreement does not include engineering services for a Quantitative and Countermeasures Analysis or the development of recommendations for risk mitigation. These items are not required for certification of the RRA to EPA. If the Town would like to develop these analyses, we can perform them under separate agreement or amendment to this contract.

Task 2 – Emergency Response Plan (ERP) Update

We will provide an update to the Town's existing ERP to bring it into compliance with AWIA requirements.

We will prepare a draft updated electronic copy of the ERP for review and comment. In addition to updating any roles and responsibilities that have changed since the last revision, the updated ERP will incorporate components required by AWIA for EPA Certification. Additional requirements include, but are not limited to:

- Incorporation of risks as identified in the RRA
- Cybersecurity-specific Incident Specific Response Protocols
- Hazard-specific Incident Specific Response Protocols
- AWIA-specific language on available emergency water supplies
- AWIA-specific language on flood barriers
- AWIA-specific language on relocation of intake structures
- AWIA-specific language on response roles

All changes and modifications to the ERP will be clearly identified. Upon receipt of comments and approval of the draft ERP, we will finalize the document and provide both hard copy updates and electronic files necessary to prepare additional copies of the ERP.

COMPENSATION

Woodard & Curran proposes to complete the scope of services as outlined above for the lump sum cost presented below. Axis will be invoiced monthly on a percent complete basis.

Task #	Task Description	Lump Sum Budget
1	Risk and Resilience Assessment (RRA)	\$26,800
2	Emergency Response Plan (ERP) Update	\$22,900
	Total	\$49,700

SCHEDULE

The Axis team will commence the engineering services under this Agreement upon receipt of a written Notice to Proceed. Execution of the Agreement shall serve as the Notice to Proceed.



The Axis team will complete the Scope of Work for Task 1 (RRA) prior to the June 30, 2021 deadline for communities serving a population of 3,300 to 49,999. We will complete the Scope of Work for Task 2 (ERP) prior to the December 31, 2021 compliance date, or within 6 months of certification of the RRA, whichever is sooner.

ASSUMPTIONS

This proposal is subject to the following assumptions:

- The Town will coordinate attendance of requested Town staff to workshops.
- The Town will provide the most recent water system maps and water system asset information, as requested.
- Upon completion of the RRA by Axis and Woodard & Curran, the Town will complete the certification of completion of the RRA on EPA's website. We will provide guidance and will be available to assist with the process.
- The Risk and Resilience Assessment will be a qualitative assessment and cyber security assessment with basic recommendations, as required by EPA for compliance with AWIA. A detailed quantitative and countermeasures analysis can be completed at the request of the Town under a separate agreement or amendment.
- The Axis team will update the Town's existing Emergency Response Plan to reflect the risks identified during the RRA. We assume that the Town's existing ERP will be made available electronically to our team.
- ERP Training is not provided as part of this proposal but can be provided at the request of the Town under a separate agreement or amendment.

MINUTES
FORT MYERS BEACH
Selection Advisory Committee
Town Hall – Council Chambers
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Wednesday, March 24, 2021

I. CALL TO ORDER

Meeting was called to order at 2:34 p.m. by Contracts Manager Jason Freeman. Other members present:

Assistant Community Development Director Carl Bengé
Utilities Director Christy Cory
Public Works Director Chelsea O’Riley

II. REVIEW AND DISCUSSION OF PROPOSALS - LOI-21-13-UT Risk and Resiliency Assessment (RRA)

Manager Freeman stated that the LOI was issued on February 12, 2021, and letters of interest were due on March 5, 2021, at 4:00 p.m. The Town received letters of interest from ADA Engineering, Axis Infrastructure and Tetra Tech Engineering. All letters were received on time and all acknowledged the addendum. Manager Freeman noted that no representatives from the firms were in the audience. All members completed a ranking sheet. He indicated that letters of interest were sent to the qualified firms under RFQ-19-17-AD and RFQ-20-22-AD under Category 101 Water Resources. Director Cory explained that it was for EPA compliance. She described the RRA and the ERP (Emergency Response Plan). She indicated the Town had always been in compliance with the ERP, but they did not have an RRA, which was due in June of 2021.

Manager Freeman reported that all members ranked Axis Infrastructure first, Tetra Tech second and ADA Engineering third. Director Cory noted the experience and examples that Axis Infrastructure listed. She commented that their experience was her reason for ranking them number one. She indicated that ADA Engineering did not include specifics regarding past projects and the RRA. She noted they focused on items not relevant to the Town.

Director O’Riley agreed with Director Cory concerning ADA Engineering. Tetra Tech stated the deadline would be challenging for them to meet but they did have experience. She chose Axis because they brought a wealth of knowledge to the table, but she noted they did not state whether they could meet the deadline. Assistant Director Bengé agreed with Directors Cory and O’Riley.

MOTION: Director O’Riley moved to recommend Axis Infrastructure as number one, Tetra Tech Engineering number two and ADA Engineering number three; second by Assistant Director Bengé.

VOTE: Motion passed unanimously.

III. ADJOURNMENT

Manager Freeman adjourned the meeting at 2:47 p.m.

Signature _____
End of document

1. **Requested Motion:**

Meeting Date: April 5, 2021

Allocate and appropriate funds and approve Supplemental Task Authorization #2, in the amount of \$142,500 for completion of the Comprehensive Plan and Land Development Code updates, and authorize the Town Manager to execute the Supplemental Task Authorization with The Corradino Group.

Why the action is necessary:

To approve the consultants schedule so they can continue the next phase of RFQ=19-17-AD.

What the action accomplishes:

Moving forward with updates to Town's Comprehensive Plan and Land Development Code

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Carryout of original scope of work for contract RFQ-19-17-AD submitted by The Corradino Group, Inc. on March 26, 2020. On June 26, 2020, the STA#1 was passed administratively. STA#1 consisted of: Task 1 - Issue Scoping, gathering input on issues affecting the Town, conduct community workshop with a cost of \$10,000 and a deliverable draft of major issues and . Task 2 - Evaluation and appraisal report was not done, so the \$12,000 will be rolled over to STA#2. STA#2 consists of: Task 1 - Preparation of Comprehensive Plan Amendments scheduled for 120 days for \$45,000. Task 2 - Adoption of Comprehensive Plan Amendments scheduled for 90 days for \$15,000. Task 3 - Land Development Regulations Amendment scheduled for 64 days for \$82,500. The project will take a cumulative number of 274 days with a total budget of \$142,500.

STA#2 must be approved by Town Council.

Attachments:

1. STA 2 Corradino Group

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Carl Benge, Assistant Community Development Director
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/30/2021
Approved - 3/30/2021
Approved - 3/31/2021
Approved - 3/31/2021
Final Approval - 3/31/2021

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: STA # 2

CONTRACT/PROJECT NAME: Planning Consulting Services for Comprehensive Plan and Land Development Code

CONSULTANT: The Corradino Group

PROJECT NO.: _____

SOLICIT NO.: RFP-20-11-CD

CONTRACT NO.: RFQ-19-17-AD

REQUESTED BY: Community Development

DATE OF REQUEST: 03/09/2021

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: March 9, 2021

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: March 9, 2021

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: March 9, 2021

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: March 9, 2021

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____ Date _____ By: _____ Date _____
Department Director Contracts Manager

ACCEPTED: The Corradino Group

By: _____ Date _____
Consultant/Provider

TOWN APPROVAL:

By: _____ Date _____ By: _____ Date _____
Town Manager Town Attorney

STA NTE Amount: \$142,500

Cost of STA: \$ 142,500

Date: March 9, 2021

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Planning Consulting Services for Comprehensive Plan and Land Development Code

Overview

STA NO. 2: Description – March 09, 2021

The following services will be provided by The Corradino Group:

1: Preparation of Comprehensive Plan Amendments

The Corradino Team will prepare amendments to the Plan's adopted goals, objectives and policies in the strikethrough/underscore format prescribed by the State, as well as amendments to maps, tables and other adopted components. The amendments will be linked to the information prepared in Tasks 1 and 2 (the Town's Evaluation and Appraisal). The amendments will be presented in a readable and user-friendly format that meets statutory requirements and community needs.

In addition, Corradino, under the direction of Town staff, will prepare a complete update of the Comprehensive Plan Data and Analysis Report in order to achieve the following: support the EAR amendments; bring the Comprehensive Plan up to date; and; fully comply with the requirements of Chapter 163.3177, Florida Statutes (F.S.). The Data and Analysis Report will be presented in a user-friendly manner and match the graphic template of the Evaluation and Appraisal Report. As needed, Corradino will attend Town Council Management and Planning sessions (M&Ps) or Town Council meetings to present findings, make recommendations and further assist the Town Council in their policy decision making process.

Deliverables:

Draft Amendments (Volume 1)

Updated Data and Analysis (Volume 2)

2: Adoption of Comprehensive Plan Amendments

Upon completion of the draft Comprehensive Plan amendments, the Corradino Group Team, under direction of Town staff, will:

- Attend meetings to present the draft and receive staff comments
- Revise the draft amendments based on Town and staff input
- Present the draft amendments to advisory boards and public workshops/hearings at direction of staff
- Present the draft amendments to the Local Planning Agency and Town Commission for approval at first reading
- Transmit the proposed amendments to the State and review agencies after approval of the ordinance at first reading, allowing for the 60-day review process
- Address any objections, recommendations and comments provided by the State and review agencies in the ORC Report
- Present the amendments to the Local Planning Agency and Town Commission for adoption

- Provide a revised Comprehensive Plan incorporating all amendments after the State issues its Notice of Intent
- Provide support in the event of an Administrative Challenge

Deliverables

Final Comprehensive Plan Amendments (Volume 1)

Final Data and Analysis (Volume 2)

Updated Comprehensive Plan

3: Land Development Regulation Amendments

Concurrently with the Comprehensive Plan, this task will be to draft and codify the amendments into the Land Development Regulations. Upon completion of the draft LDR amendments, the Corradino Group Team, under direction of Town staff, will:

- Attend meetings to present the draft and receive staff comments
- Revise the draft amendments based on Town and staff input
- Present the draft amendments to advisory boards and public workshops/hearings at direction of staff
- Present the draft amendments to the Local Planning Agency and Town Commission for approval at first reading
- Present the amendments to the Local Planning Agency and Town Commission for adoption

Draft land development regulation (LDR) amendments will be developed in conjunction with comprehensive plan amendments. However, depending on the land development regulation changes, adoption to codify the LDR changes will occur after the full adoption of the comprehensive plan amendments.

Deliverables:

Updated Land Development Regulations

Cost Breakdown (By Task):

I. Preparation of Comprehensive Plan Amendments		\$45,000
II. Adoption of Comprehensive Plan Amendments		\$15,000
III. Land Development Regulations Amendments		\$82,500

Total Cost (of Job): **\$142,500.00**

EXHIBIT BDate: March 9, 2021COMPENSATION AND METHOD OF PAYMENT FORPlanning Consulting Services for Comprehensive Plan and Land Development CodeSection 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	Preparation of Comprehensive Plan Amendments	\$45,000.00	NTE	WIPP
#2	Adoption of Comprehensive Plan Amendments	\$15,000.00	NTE	WIPP
#3	Land Development Regulations Amendments	\$82,500.00	NTE	WIPP
TOTAL (Unless list is continued on next page)		\$142,500.00	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated March 09, 2021, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto March 09, 2021 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: March 09,. 2021

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR Planning Consulting
Services for Comprehensive Plan and Land Development Code

Consultant or Sub-consultant Name: The Corradino Group
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule As Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

****NOTE:** Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: March 09, 2021

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR Planning Consulting
Services for Comprehensive Plan and Land Development Code

CONSULTANT OR SUB-CONSULTANT NAME: The Corradino Group
(A separate Attachment No. 2 should be included for each Sub-Consultant)

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: March 09, 2021

TIME AND SCHEDULE OF PERFORMANCE FOR

Planning Consulting Services for Comprehensive Plan and Land Development Code

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1	Preparation of Comprehensive Plan Amendments	120 days	120 days
#2	Adoption of Comprehensive Plan Amendments	90	210
#3	Land Development Regulations Amendments	64	274

EXHIBIT D

Date: March 09, 2021

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR

Planning Consulting Services for Comprehensive Plan and Land Development Code

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
	NONE					

1. Requested Motion:

Meeting Date: April 5, 2021

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED "SEA TURTLE CONSERVATION", PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Second reading and final adoption.

Why the action is necessary:

Proposed amendments will continue to reduce light pollution onto sea turtle nesting habitat, which will improve the survivorship of these endangered species.
Interior light continues to be the most frequent cause of light pollution on the beach.
Commercial businesses and multifamily condos continue to add lights that contribute to sky glow and do not meet Chapter 34, Article IV, Division 20. Lighting Standards.

What the action accomplishes:

15% tinting of windows mitigates interior light to reduce light pollution onto sea turtle nesting habitat on the beach, particularly on vacation rentals, high rise resorts and condo properties.

Clarifying language regarding interior lighting visibility on the beach enables better enforcement.

Referencing Chapter 34, Article IV, Division 20. Lighting Standards could reduce sky glow.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

4. Submitter of Information:

5. Background:

Marine Resource Task force conducted 1 year review of the 2020 Sea Turtle Conservation Ordinance.

The intent of changes is to accomplish the following:

Reduce interior light pollution onto sea turtle nesting habitat

- consider 15% tinting windows for new and remodel construction
- added definition for "new construction"
- add interior light check to Certificate of Occupancy inspection
- add more direct language regarding interior light visible on the beach

Reduce Sky Glow

- reference Lighting Standards (Chapter 34, Article IV, Division 20) in the Sea Turtle Conservation review and inspection for commercial and multifamily

Attachments:

1. 21-03, Amend Chapter 32 Sea Turtle Conservation 2nd Reading-C1
2. Witherington email re Reflectivity
3. Examples
4. 62B-55_ModelLightingOrdinance_NPR_0

Financial Impact:

6. Alternative Action

Do not approve amendments to Sea Turtle Conservation Ordinance

7. Management Recommendations:

8. Recommended Approval:

Chadd Chustz, Environmental Project Manager
Daphnie Bercher, Community Services Administrator
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/29/2021
Approved - 3/30/2021
Approved - 3/30/2021
Approved - 3/30/2021
Final Approval - 3/31/2021

ORDINANCE NO. 21-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION”, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach, Florida (“Town”) recognizes that artificial lighting and other human activities on the beach and upland areas have a detrimental effect on the life-cycle and nesting activities of sea turtles, which are an endangered species protected by federal and state law, and therefore subject to reasonable regulations as proposed herein; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by a healthy sea turtle population; and

WHEREAS, the Town desires to minimize the detrimental impact on nesting sea turtle populations, and other listed sensitive wildlife by implementing a system of rules and regulations that reduces the amount of artificial light intentionally or unintentionally visible from beaches; and

WHEREAS, on March 15, 2021 the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on April 5, 2021 the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:¹

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

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

Section 2. Article V of Chapter 32 of the Code of Ordinances of the Town of Fort Myers Beach entitled “Sea Turtle Conservation” is hereby amended to read as follows:

CHAPTER 32 – WATERWAYS AND BEACHES

ARTICLE V. – SEA TURTLE CONSERVATION

Sec. 32-101. - Article purpose and objectives.

The purpose of this article is to protect nesting and hatchling sea turtles on the beaches in the Town of Fort Myers Beach ("town") by ensuring that their nesting habitat is not degraded by artificial light. The objective of the article is to ensure artificial light does not interfere with sea turtle nesting and hatching events through the appropriate design and implementation of coastal lighting systems. In order to further the objective of full implementation, this article also includes provisions designed to educate residents and beach users in the town on the benefits of appropriate coastal lighting and provides for weekly inspections to ensure compliance with the acceptable lighting standards.

Sec. 32-102. - Applicability.

The provision of this article shall apply to all properties within the town that may produce artificial light directly, indirectly, or cumulatively visible from any portion of the beach, regardless of whether those properties are beachfront properties; and to all buildings and related infrastructure, including landscaping, as well as all other activities that may adversely impact sea turtles.

Sec. 32-103. - Definitions.

For the purposes of this article, the following words and phrases will have the meanings respectively ascribed to them by this section unless the context clearly indicates otherwise:

Artificial light means the light emanating from any human-made device.

Beach means the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.

Cumulatively visible means light from numerous artificial light sources on a single property that as a group are directly or indirectly visible to an observer standing anywhere on the beach.

Directly visible means visibility of the glowing elements, lamps, globes, or reflectors of an artificial light source by an observer standing anywhere on the beach.

Disorientation means an event caused by direct, indirect, or cumulative artificial lighting on sea turtle nesting habitat resulting in the disruption in the ability of nesting sea turtle females and sea turtle hatchlings to find the sea from the beach.

Footcandle means the English unit for measuring illuminance; the uniform illumination of a surface one foot away from a point source of one candela; one lumen per square foot; equals to 10.76 lux.

Frontal dune means the first natural or man-made mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.

Full cutoff means a lighting fixture constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected at or above 90 degrees as determined by photometric test or certified by the manufacturer.

Fully shielded means a lighting fixture constructed in such a manner that the glowing elements, lamps, globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently affixed.

Indirectly visible means visibility of reflected light as a result of glowing elements, lamps, globes, or reflectors of an artificial light source which is visible to an observer standing anywhere on the beach without the light source being directly visible.

Lighting plan means plan view and cross section drawings describing location, number, wattage, wavelength, elevation, orientation, fixture cut sheets, and all types of proposed exterior artificial light sources, including, but not limited to, artificial lighting affixed to permanent structures, outdoor lighting, pool lighting, and internally or externally lighted signs.

Long wavelength means a luminaire emitting light wavelengths of 560 nanometers or greater and absent wavelengths below 560 nanometers. Lamps that

meet the definition of long wavelength through the use of filters, gels, or lenses are not permitted.

New Construction means all new construction of or additions and alterations to buildings, pools, pavement, other structures, landscape areas or lighting systems, including the change or resumption of land use.

Nesting season means the nesting period for sea turtles is from May 1 through October 31 of each year. Nesting season may be extended before or after these dates on an annual basis based on nesting activity observed in the Town of Fort Myers Beach.

Nighttime means the locally effective time period between sunset and sunrise.

Non-egress lighting means lighting that is not being used to light a distinct path or meet minimum requirements for emergency egress, including but not limited to, decorative lights (e.g., Christmas lights, strobe lights, string lights, etc.), balcony lights, ceiling fan lights, landscape lights, and uplights.

Outdoor area means any portion of a property that could have an artificial light source not attached to a permanent structure, including but not limited to, pathway lighting, landscape lighting, pool lighting, etc.

Sea turtle means any turtle, including all life stages from egg to adult, of these species: Green (*Chelonia mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta caretta*), Hawksbill (*Eretmochelys imbricata*), and Kemp's Ridley (*Lepidochelys kemp*). For the purposes of this article, the term sea turtle is synonymous with marine turtle.

Sea turtle nesting habitat means all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat includes all sandy beach and unvegetated or vegetated dunes immediately adjacent to the sandy beach and accessible to nesting female turtles.

Take means an act that actually kills or injures marine turtles, and includes significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.

Temporary lighting means any non-permanent light source that may be hand-held or portable including, but not limited to, tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.

Tinted glass means glass modified via tinting, film or other material to reduce the inside to outside light transmittance value to 15 percent.

Sec. 32-104. - Annual public notice.

At least 30 days prior to the commencement of every sea turtle nesting season, the town shall provide written notice summarizing the provisions contained in this article.

Sec. 32-105. - Exterior and interior lighting affixed to new structures, new construction and improvements to existing structures.

- (a) All artificial lighting affixed to the exterior of new permanent structures, construction or additions shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required footcandles.
- (b) As an exception to (a) above, all non-egress lighting may be affixed to the landward exterior of permanent structures provided that the fixtures are fitted with a long wavelength source and are shall not be directly, indirectly, or cumulatively visible from any portion of the beach.
- (c) Lighting at egress points shall be limited to the minimum number of fixtures and footcandles necessary to meet federal, state, and local safety requirements.
- (d) Locations including, but not limited to, stairwells, elevators, parking garages, or courtyards shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach. Window film, tinting, light screens, shades or curtains shall be used to block visibility of interior lights from the beach. Light screens shall be used on open or enclosed staircases on the seaward or shore-perpendicular side of a building or for parking garages to limit visibility of lights from the nesting beach.
- (e) All glass windows, walls, railings and doors on the seaward and shore-perpendicular sides ~~of~~ included in any new construction, alteration, or window replacement shall utilize glass with an inside to outside light transmittance value of 15 percent or less.
- (f) Emergency lights shall be on a separate circuit and activated only during power outages or other situations in which emergency lighting is necessary for public safety.

- (g) Prior to issuance of a development order and/or building permit for all new structures, new construction and improvements to existing structures seaward of the Coastal Construction Control Line as defined by F.S. § 161.053, a town approved lighting plan meeting the provisions of this article and Chapter 34, Article IV, Division 20. – Lighting Standards is required.
- (h) Prior to issuance of a development order and/or building permit for all multifamily, commercial and industrial new structures, new construction and improvements to existing structures landward of the Coastal Construction Control Line as defined by F.S. § 161.053, a town approved lighting plan meeting the provisions of this article and Chapter 34, Article IV, Division 20. – Lighting Standards is required.
- (i) Prior to the issuance of a certificate of occupancy (CO) or a certificate of completion (CC), the exterior and interior lighting of new development shall be inspected after dark by the town, with all exterior and interior lighting turned on, to determine compliance with the approved lighting plan and this article. In addition, all manufacturer specification stickers shall remain affixed to all glass windows, walls, railings and doors on the seaward and shore-perpendicular sides of any new construction to determine compliance with the approved window and door specifications and plan.

Sec. 32-106. - Existing exterior and interior lighting.

- (a) Existing artificial lighting affixed to the exterior of permanent structures shall not be directly, indirectly, or cumulatively visible from any portion of the beach during sea turtle nesting season.
- (b) Appropriate techniques for existing exterior lighting to achieve compliance with the provisions of this article include, but are not limited to:
 - (1) Reposition, modify or remove existing lighting fixtures so that the point source of light or any reflective surface of the light fixture is no longer directly, indirectly or cumulatively visible from the beach;
 - (2) Replace fixtures having an exposed light source with fully shielded fixtures;
 - (3) Replace any light source, light bulb or lamp that is not long wavelength (e.g., incandescent, fluorescent, or high

intensity lighting) with the lowest wattage long wavelength (e.g., LED or low pressure sodium) light source or lamp available for the specific application;

- (4) Replace non-directional fixtures with directional fixtures that point down and away from the beach;
- (5) Provide shields for fixtures visible from the beach and not practical to immediately be replaced. Beachside shields are to cover 270 degrees and extend below the bottom edge of the fixture on the seaward side so that the light source or any reflective surface of the light fixture is not visible from the beach;
- (6) Replace pole lamps with low-profile, low-level luminaries so that the light source or any reflective surface of the light fixture is not visible from the beach;
- (7) Plant or improve vegetation buffers between the light source and the beach to screen light from the beach;
- (8) Construct a ground level barrier to shield light sources from the beach. Ground-level barriers must not interfere with sea turtle nesting or hatchling emergence, or cause short- or long-term damage to the beach and dune system;
- (9) Permanently remove or permanently disable any fixture which cannot be brought into compliance with the provisions of these standards;
- (10) Televisions shall be shielded or positioned such that they are not directly, indirectly, or cumulatively visible from the beach.

(c) Interior lighting shall not be directly, indirectly, or cumulatively visible from any portion of the beach during sea turtle nesting season.

(d) Appropriate techniques to achieve compliance for interior lighting with the provisions of this article include, but are not limited to: The following measures can reduce or eliminate the negative effects of interior light emanating from doors and windows within line-of-sight of the beach:

- (1) Apply window tint or film that meets the light transmittance standards for tinted glass;

- (2) Rearrange lamps and other moveable fixtures away from windows;
- (3) Use opaque shades or room darkening window treatments (e.g., blinds, curtains, screens) to shield interior lights from the beach.
- (4) A combination of the above techniques may be required to achieve compliance with this article.

Sec. 32-107. - Outdoor areas.

- (a) All lighting of outdoor areas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required footcandles.
- (b) All pathway lighting shall utilize low-level fixtures that do not exceed 42 inches in height. Fixtures shall be downward directed and utilize long wavelength lamps and beachside shields.
- (c) All non-egress outdoor lighting shall not be directly, indirectly, or cumulatively visible from any portion of the beach.
- (d) Internally or externally lighted signs shall not be located on the seaward and shore-perpendicular sides of any structures, and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
- (e) Ponds and fountains on the seaward and shore-perpendicular sides of any structures shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
- (f) Fire, including cooking fires, bonfires and fire pits, if permitted by the town, shall be shielded with an opaque structure or partition, and positioned such that the flame is not directly, indirectly, or cumulatively visible from any portion of the beach.
- (g) Televisions shall be located landward of the dune and shall be shielded or positioned such that they are not directly, indirectly, or cumulatively visible from the beach.
- (h) Handheld and other portable temporary lighting shall not be directed toward or used in a manner that disturbs sea turtles or other coastal wildlife.

Sec. 32-108. - Parking areas.

- (a) All lighting of parking areas shall be long wavelength, downward directed, full cutoff, fully shielded, and mounted to the minimum level required to maintain compliance with federal, state and local law.
- (b) Parking area lighting shall be shielded from the beach via vegetation, natural features, or artificial structures rising from the ground. These shall prevent artificial light sources, including but not limited to, vehicular headlights, from producing light that is directly, indirectly, or cumulatively visible from any portion of the beach.
- (c) Lighting of parking areas shall produce no more lighting than the minimum requirement as outlined by federal, state and local law.
- (d) Lighting of parking areas shall consist of either:
 - (1) Ground-level, downward-directed fixtures, equipped with interior dark non-reflective baffles or louvers, mounted either with a wall mount, on walls or piles, facing away from the beach, or
 - (2) Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded 180 degrees on the side facing the beach, or
 - (3) Pole-mounted lights, if required, which shall:
 - a. Only be used in parking areas when mounting the lights at lower elevations cannot practicably comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.
 - b. Located on the landward sides of buildings and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
 - c. Mounted at the minimum height necessary to meet the minimum light level requirement.

- d. Downward-directed onto non-reflective surfaces.
- (4) Equipment yards, storage yards, and temporary security lights shall also adhere to the lighting restrictions contained herein.

Sec. 32-109. - Pool areas.

- (a) Lighting of pool decks, pool facilities, swimming pools, and spas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required footcandles.
- (b) Lighting of the pool water surfaces and the pool wet deck surfaces shall comply with the minimum light levels set forth in applicable federal and state laws designed to protect public safety.
- (c) Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to the applicable requirements for acceptable light fixtures set forth herein.
- (d) Underwater lighting of pools or spa light shall:
 - (1) Be mounted horizontally in the wall,
 - (2) Not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach, and
 - (3) Shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. 32-110. - Pier structures.

- (a) Lighting of pier structures projecting over the beach or over water shall be long wavelength, downward directed, and fully shielded.
- (b) Lighting of pier structures projecting over the beach, or over water, shall be mounted no higher than 42 inches above the deck surface. These shall be directed onto the deck surface only, preventing light pollution or light spillage beyond the walking surface.
- (c) Lighting of pier structures projecting over the beach or over water shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. 32-111. - Dune walkovers and beach access points.

- (a) Lighting of beach access points shall be restricted to that portion of the structure landward of the dune. All lighting of beach access points shall be long wavelength, downward directed, full cutoff and fully shielded and shall not be directly, indirectly, or cumulatively visible from the beach.
- (b) Lights are allowable on dune walkovers or elevated boardwalks only as required for building code purposes and may only be installed landward of the frontal dune. Walkover lighting shall not be directly, indirectly or cumulatively visible from the beach.

Sec. 32-112. - Special events, vehicles, raking and temporary lighting.

- (a) All special events or construction taking place on or adjacent to the beach require a permit from the town, and may require a permit from the Florida Department of Environmental Protection.
- (b) Lighting associated with a special event that may directly, indirectly, or cumulatively be visible from any portion of the beach shall not be authorized at nighttime during sea turtle nesting season.
- (c) The operation of all vehicles, except emergency and law enforcement vehicles or those permitted on the beach for sea turtle conservation in accordance with F.S. § 379.2431(1), or other research and conservation, shall be prohibited on the beach at nighttime during sea turtle nesting season. Excepted, non-emergency vehicles shall affix red filter to their headlights when operating on sea turtle nesting habitat at nighttime.
- (d) Beach raking activities during sea turtle nesting season, if permitted by the town, shall not:
 - (1) Operate at nighttime;
 - (2) Begin before 9:00 a.m. or before the completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first;
 - (3) Occur within ten feet of any marked sea turtle nest.
- (e) Within sea turtle nesting season, temporary work zone lighting for roadway construction and during declared emergencies shall be directed away from the beach to avoid illumination of or direct

visibility from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the immediate construction area.

- (f) All other temporary construction lighting shall be:
 - (1) Inclusive of all the standards herein, including utilizing fixtures that are long wavelength, downward directed, full cutoff, and fully shielded so light is not directly or indirectly visible from the beach, and
 - (2) Turned off during nighttime in sea turtle nesting season, or if temporary lighting is deemed necessary during sea turtle nesting season it shall only be allowed from 6:00 a.m. to 9:00 p.m., must be restricted to the minimal amount necessary, and shall incorporate all the standards herein, and
 - (3) Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of fixture, and
 - (4) Restricted to the minimal number of footcandles necessary to conform to the applicable construction safety regulations.

Sec. 32-113. - Beach furniture and obstructions.

- (a) Man-made objects shall not obstruct sea turtle nesting habitat during nesting season during nighttime. All obstructions, including, but not limited to, beach furniture, cabanas, umbrellas, tents, personal watercraft, bikes, vehicles, and boats, shall be removed from sea turtle nesting habitat between the hours of 9:00 p.m. and 7:00 a.m. during sea turtle nesting season.
- (b) During sea turtle nesting season, permitted beach furniture vendors shall not place beach furniture onto sea turtle nesting habitat before 9:00 a.m., or prior to the completion of daily monitoring for sea turtle nesting activity by the FWC authorized marine turtle permit holder, whichever comes first.
- (c) No beach furniture or other man-made object shall be placed within ten feet of a marked sea turtle nest.

Sec. 32-114. - Take and disorientation.

- (a) A person, firm, or corporation shall not cause a disorientation of nesting sea turtles or sea turtle hatchlings.

- (b) A person, firm, or corporation shall not take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtle species.

Sec. 32-115. - Penalties.

- (a) Any violation of this article may be prosecuted in accordance with the provisions set out in section 1-5 and chapter 2, article V of the Land Development Code.
- (b) This article may be enforced by any duly authorized law enforcement officer, town code enforcement officer or town designee.
- (c) The law enforcement officer, town code enforcement officer or town designee is authorized and empowered to make inspections at reasonable hours of all activities regulated by this article in order to ensure compliance with the provisions of this article. Any person who violates any provision of this chapter, or of any regulation or guideline that implements this chapter, shall be ordered immediately to stop all work.
- (d) Any person who takes any action or omission in violation of any provision of this article and fails to cure such violation after proper notice is provided, shall be subject to a fine of up to \$250.00 per day per violation for initial violations, and \$500.00 per day per violation for repeat violations. All penalties incurred as a result of violation of this article shall continue to accrue until such violations are cured.
- (e) Nothing contained herein will prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article. Such other lawful action will include, but will not be limited to, an equitable action for injunctive relief or an action at law for damages.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid,

such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

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

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this 5th day of April, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

Chadd Chustz

From: eve@turtletime.org
Sent: Tuesday, January 5, 2021 9:49 AM
To: 'Blair Witherington'
Cc: Chadd Chustz
Subject: RE: Question about REFLECTIVITY

Good Morning, Blair,

Thank you so much for responding to my email!

I will forward your information to Chadd with the hope that the issue of reflectivity can be resolved.

Cheers,
Eve

From: Blair Witherington <blairwitherington@gmail.com>
Sent: Monday, January 04, 2021 4:46 PM
To: Eve Haverfield <eve@turtletime.org>
Cc: Blair Witherington <Blair.Witherington@disney.com>
Subject: Re: Question about REFLECTIVITY

Hi Eve,

I'm unaware of any evidence showing effects from large reflective surfaces on hatchling orientation. However, some logical inference might be a guide.

Given that 1) hatchlings on a naturally lighted beach are able to orient correctly at all phases of the moon, and that 2) on artificially lighted beaches, nights with a brighter moon have less disorientation, and that 3) the direction of reflected moonlight would always be less bright than the direction of the moon (no reflection is 100% efficient), I would not expect reflections of the moon or any other celestial light to have a significant effect on hatchling orientation.

Of course, windows, lights, and turtles are more complex than this. If there is a virtual meeting to talk out this complexity, I'd be happy to take part and share what little I know.

Best of luck and Happy New Year,

Blair

On Mon, Jan 4, 2021 at 11:47 AM <eve@turtletime.org> wrote:

Hi Blair...

I'm sorry to impose on you; I need help regarding the issue of reflectivity of window tints and their effect on sea turtle behavior (I have no idea). The Fort Myers Beach Lighting Ordinance may be in peril if we do not address the issue raised by a disgruntled realtor who was cited for lighting violations this past summer and who raised the issue of reflectivity and moonlight!

Chadd, the Environmental Project Manager, has been very helpful enforcing the Town's Lighting Ordinance and I hate to lose his helpfulness. (The Town adopted the new Model Lighting Ordinance before it was finalized.) He has been in touch with Tonya and Rachel but they have not provided, what Chadd feels, is a quantitative measure - **see below**.

Do you have any advice or recommendations?

Wishing you and Dawn a Happy and Healthy 2021!

With appreciation,

Eve

From: Chadd Chustz <chadd@fmbgov.com>
Sent: Thursday, December 03, 2020 8:49 AM
To: Stevenson, Rachael <Rachael.Stevenson@MyFWC.com>
Cc: eve@turtletime.org
Subject: Re: RE: Turtle lighting ordinance and Chad Chustz

Good Morning Rachael,

Thank you for replying, but I feel that we are in the same conversation as 3 months ago.

We need a quantitative measure of the industry's standard for reflectivity that qualifies as not acceptable or acceptable with regards to affecting sea turtle nesting behavior.
100% reflective Mirror glass ok?

Please, I still need help and quantitative, technical guidance.

Thank you,

Chadd Chustz
Town of Fort Myers Beach

From: "Stevenson, Rachael" <Rachael.Stevenson@MyFWC.com>
Date: Wed Dec 02 16:52:08 EST 2020
To: "Chadd Chustz" <Chadd@fmbgov.com>
Subject: RE: Turtle lighting ordinance and Chad Chustz

Good morning Chadd,

We would generally recommend against using tint that is highly reflective because of the potential to reflect light that could be seen from the beach. The easiest solution is to use 15% Visible Light Transmittance film that is not highly reflective. The exterior reflectance is not a specification we had considered previously but we are trying to get more information and possibly samples so that we can develop some guidance. For example, is there a threshold or percentage of the exterior reflectance that would not be considered highly reflective or that is low but could be applied without the issue of thermal shock? It may be helpful to reach out to other tint companies for guidance on the tint as well as the issue of thermal shock. If you get more information or have contacts for local tint companies, I would be more than happy to assist in reaching out to get more information!

That being said, ordinances usually only speak to the Visible Light Transmittance value for window tint/film and does not speak to the interior/exterior reflective values. The new model lighting ordinance that was developed included language of "directly and indirectly visible" which gets more at reflective light and uplighting. It is my understanding that Fort Myers Beach incorporated most of the language of the new model ordinance, which will help to minimize the overall reflective light.

Please let me know if any of this information has been helpful.

Rachael Stevenson

Fisheries and Wildlife Biological Scientist IV

Florida Fish and Wildlife Conservation Commission

Imperiled Species Management Section

620 South Meridian Street- 6A

Tallahassee, Florida, 32399-1600

Office: (850) 922-4330

Rachael.Stevenson@MyFWC.com

From: Chadd Chustz <Chadd@fmbgov.com>
Sent: Monday, November 30, 2020 4:07 PM
To: Long, Tonya <Tonya.Long@MyFWC.com>; Stevenson, Rachael <Rachael.Stevenson@MyFWC.com>; Davis, Luke

<Luke.Davis@MyFWC.com>

Subject: FW: Turtle lighting ordinance and Chad Chustz

[EXTERNAL SENDER] Use Caution opening links or attachments

Good Afternoon,

Following up on my email from Sept/Oct, I need technical assistance regarding window tinting.

Please offer guidance with regards to reflectivity specifications on tinting film/windows.

Also, have you received complaints regarding tinting film retrofitted onto double pane windows causing cracking due to heat absorption?

Thank you,

Chadd Chustz

Environmental Project Manager

Town of Fort Myers Beach

chadd@fmbgov.com

(239) 765-0202 Ext. 1312

From: Roger Hernstadt

Sent: Monday, November 30, 2020 3:46 PM

To: Chadd Chustz <Chadd@fmbgov.com>

Cc: Daphnie Bercher <DaphnieB@fmbgov.com>

Subject: RE: Turtle lighting ordinance and Chad Chustz

I set up an appointment with Chad Chustz and met him at one of our beachfront homes, along with my General Manager, one evening this summer. We provided him with the details and a sample of the window film and asked him if this film would be in compliance. He too was concerned of the reflective nature of the film. When we questioned him if an owner could be fined if there was a full moon and the window tint reflected off the moon and there was a turtle disorientation, he told us he would have to look into this. .

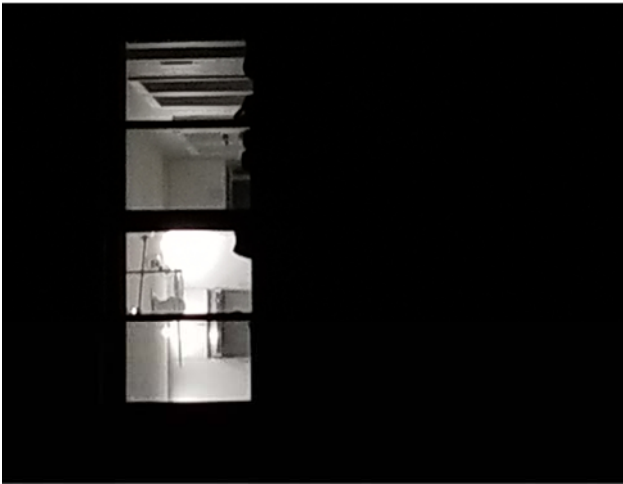
very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

--

Blair Witherington, PhD
VP and Research Scientist
Inwater Research Group, Inc.
www.inwater.org

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.







City/County of _____, Florida

Chapter ____.

MODEL LIGHTING ORDINANCE FOR SEA TURTLE PROTECTION

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ORDINANCE NUMBER 20__-__

LAND DEVELOPMENT CODE

AN ORDINANCE OF THE CITY/COUNTY OF _____ AMENDING CITY/COUNTY CODE CHAPTER _____
PROVIDING FOR AMENDMENTS TO ADOPT MODEL LIGHTING REQUIREMENTS; PROVIDING FOR REPEAL OF
ORDINANCES; PROVIDING FOR TERRITORY EMBRACED; PROVIDING FOR SEVERABILITY; PROVIDING FOR
INCLUSION INTO THE CODE OF ORDINANCES; PROVIDING FOR EFFECTIVE DATE.

SECTION ____-1. – BASIS OF ORDINANCE

Sec. ____-1.1. - Findings of Fact

***Whereas, the City/County of _____** recognizes that light pollution of beaches is a serious threat to sea turtles and other species inhabiting its beaches; and

***Whereas, the City/County of _____** recognizes that nesting adult and hatchling sea turtles are negatively affected by light pollution created by artificial light visible from any portion of the beach; and

***Whereas, the City/County of _____** recognizes that sea turtles are protected by federal and state law; and

***Whereas, the City/County of _____** recognizes that both its economy and the quality of life of its residents are enriched by a healthy sea turtle population; and

***Whereas, the City/County of _____** desires to minimize the detrimental effect on nesting sea turtle populations, and other listed sensitive wildlife by implementing a system of rules and regulations that reduces the amount of artificial light intentionally or unintentionally visible from beaches;

**Guidance: These generic Findings of Fact are illustrative only. Findings of Fact should relate to the specific context of the County or City adopting a sea turtle lighting ordinance and may include data on sea turtle nesting, and disorientation/misorientation if available. It may also include information on the qualitative and quantitative value of sea turtles to the specific beachfront economies.*

NOW, THEREFORE, BE IT ORDAINED, BY THE CITY COUNCIL/BOARD OF COUNTY COMMISSIONERS OF THE CITY/COUNTY OF _____ ON THIS ____ DAY OF _____, 20__.

Sec. ____-1.2. - Title of Ordinance

This ordinance shall be referred to as the **City/County of _____** Lighting Ordinance for Sea Turtle Protection.

Sec. ____-1.3. - Ordinance Purpose and Objectives

The purpose of this Ordinance is to protect nesting and hatchling sea turtles on the beaches in the **City/County of _____** by ensuring that their nesting habitat is not degraded by artificial light. The objective of the ordinance is for the appropriate design and implementation of coastal lighting systems to

ensure that light pollution does not interfere with sea turtle nesting and hatching events while at the same time protecting public safety. In order to further the objective of full implementation, this Ordinance also includes provisions designed to educate residents and beach users in the **City/County of _____** on the benefits of appropriate coastal lighting and provides for regular inspections to ensure compliance with the acceptable lighting standards.

Sec. ____-1.4. - Definitions

1. **Artificial Light**: the light emanating from any human-made device.
2. **Beach**: the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.
3. **Certified Wildlife Lighting**: lighting fixtures and bulbs reviewed and approved with conditions of use through the Florida Fish and Wildlife Conservation Commission's Wildlife Lighting Certification Process and published at <https://myfwc.com/conservation/you- conserve/lighting/criteria/certified/>.
4. **Cumulatively Visible**: light from numerous artificial light sources that as a group can be seen by an observer standing anywhere on the beach.
5. **Directly Visible**: occurs when glowing elements, lamps, globes, or reflectors of an artificial light source can be seen by an observer standing anywhere on the beach.
6. **Foot-Candle**: the English unit for measuring illuminance; the uniform illumination of a surface one foot away from a point source of one candela; one lumen per square foot; equal to 10.76 lux.
7. **Frontal Dune**: the first natural or man-made mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.
8. **Full Cutoff**: a lighting fixture constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected at or above 90° as determined by photometric test or certified by the fixture manufacturer.
9. **Fully Shielded**: a lighting fixture constructed in such a manner that the glowing elements, lamps, globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently affixed.
10. **Indirectly Visible**: light reflected from glowing elements, lamps, globes, or reflectors of an artificial light source that can be seen by an observer standing anywhere on the beach without the light source being directly visible.
11. **Long Wavelength**: a lamp or light source emitting light wavelengths of 560 nanometers or greater and absent wavelengths below 560 nanometers.

12. **Nesting Season:** For the **City/County of _____**, the sea turtle nesting period is from _____ of each year.

Guidance: For Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward Counties, the sea turtle nesting period is from March 1 through October 31 of each year. For Bay, Charlotte, Collier, Dade, Duval, Escambia, Flagler, Franklin, Gulf, Lee, Manatee, Monroe, Nassau, Okaloosa, Pinellas, St. Johns, St. Lucie, Santa Rosa, Sarasota, Volusia, and Walton Counties, the sea turtle nesting period is from May 1 through October 31.

13. **Nighttime:** the locally effective time period between sunset and sunrise.
14. **Non-egress Lighting:** exterior lighting that is not being used to light a distinct route or meet minimum requirements for emergency access to or from a building, including but not limited to decorative lights (e.g. strobe lights, string lights, etc.), balcony lights, landscape lights, and uplights.
15. **Outdoor Area:** any portion of a property that could have an artificial light source not attached to a permanent structure, including but not limited to pathway lighting, landscape lighting, pool lighting, etc.
16. **Sea Turtle:** any turtle, including all life stages from egg to adult, of these species: Green (*Chelonia mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta caretta*), Hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*). For the purposes of this ordinance, the term sea turtle is synonymous with marine turtle.
17. **Sea Turtle Nesting Habitat:** all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat includes all sandy beach and unvegetated or sparsely vegetated dunes immediately adjacent to the sandy beach and accessible to nesting female turtles.
18. **Temporary Lighting:** any non-permanent light source that may be hand-held or portable including but not limited to tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.
19. **Tinted glass:** glass modified via tinting, film or other material to reduce the inside to outside light transmittance value.

SECTION ____-2. - SEA TURTLE LIGHTING DISTRICT

Sec. ____-2.1. - Applicability

1. An overlay district, known as the *Sea Turtle Lighting District*, is hereby established within the **City/County of _____**.
2. The *Sea Turtle Lighting District* shall include all properties within the **City/County of _____**, that may produce artificial light directly, indirectly, or cumulatively visible from any portion of the beach, regardless of whether those properties are beachfront properties.

3. The provisions of this Ordinance apply to new and existing artificial lighting visible from the beach from all buildings and related infrastructure, including streetscapes, parking lots, outdoor areas, landscaping, as well as public parks and recreational areas and all other activities within the *Sea Turtle Lighting District*.
4. The provisions of this Ordinance are not intended to prevent the use of any design, materials or method of installation or operation not specifically prescribed herein, provided any such alternate has been approved. The **City/County of _____** may approve any such proposed alternate provided it:
 - a. Provides at least approximate equivalence to the applicable specific requirements of this Ordinance, and;
 - b. Is otherwise satisfactory or complies with the intent of this Ordinance, and;
 - c. Has been designed or approved by a registered lighting or electrical engineer and is supported by calculations showing that the design submitted meets that intent of the Ordinance. This sub-section shall not have the effect of waiving the lumen caps specified in this Ordinance.
 - d. Has been determined to meet requirements for Certified Wildlife Lighting and/or lights that meet FWC's Wildlife Lighting Guidelines, including long wavelength light sources (without the use of filters), full cut-off, and fully shielded fixtures.
5. Any person substantially aggrieved by any decision of the *Beach Lighting Inspector* or the *Building Official* made in administration of this Ordinance has the right and responsibilities of appeal to the *Advisory/Appeals Board* of this jurisdiction.

*Guidance: This Model establishes an Overlay District for the purpose of implementing the ordinance. This ordinance could be applied by simply consolidating (2) and (3) above and making it applicable to "all properties within the **City/County of _____** that may produce artificial light directly, indirectly, or cumulatively visible from any portion of the beach, regardless of whether those properties are beachfront properties." However, creating a District may have other benefits which include incorporating other Sea Turtle best management practices not related to lighting, as well as raising awareness through signage, etc.*

Sec. ____-2.2. - Annual Public Notice

At least thirty days prior to the commencement of every sea turtle nesting season, the **City/County of _____** shall provide notice to affected persons within the *Sea Turtle Lighting District* of the provisions contained in this Ordinance.

Declaring an official annual "lights out for sea turtles" day either the first Monday in February or April depending on the county, could also be useful. Another alternative would be designating the responsible department or official for implementing the ordinance and noticing the public.

SECTION ____-3. - LIGHTING PROVISIONS

Sec. ____-3.1. – General

Guidance: In order to provide the highest level of protection for nesting marine turtles and their hatchlings, local governments are encouraged to adopt all of the following standards for artificial beachfront lighting sources.

1. The following standards for artificial light sources are intended to help minimize harmful effects of light pollution in sea turtle nesting areas. The use of Certified Wildlife Lighting will provide the highest level of protection for nesting sea turtles and their hatchlings. Certified Wildlife Lighting refers to lighting fixtures and bulbs reviewed and approved through the Florida Fish and Wildlife Conservation Commission's Wildlife Lighting Certification Process and published at <https://myfwc.com/conservation/you-conserve/lighting/criteria/certified/>. Certified Wildlife Lighting and/or lights that meet FWC's Wildlife Lighting Guidelines, must be installed and maintained according to the approved conditions of use to achieve the light pollution reduction objectives of this Ordinance.

Guidance: The FWC Certified Wildlife Lighting website references the required options and bulleted caveats for each certified fixture. These conditions of approved use are also included in the certification letter issued to the manufacturer for the fixture. FWC Sea Turtle Lighting Guidelines can be accessed at the Sea Turtles and Lights webpage at <https://myfwc.com/wildlifehabitats/wildlife/sea-turtle/lighting/>.

2. New construction refers to all new construction of or additions and alterations to buildings, pools, pavement, other structures, landscape areas or lighting systems, including the change or resumption of land use. The most protective lighting standards apply to new construction visible from the beach.
3. Existing artificial lighting refers to lighting fixtures, sources and systems operating prior to the effective date of this ordinance. Existing lights and light sources that are visible from the beach shall be replaced or modified to conform to standards given in Section -3.7. In order to bring existing lighting systems into future compliance with this Ordinance, standards for new coastal construction shall be applied when permits are sought for new structures or the alteration, movement, enlargement, replacement or installation of new lighting systems.

Sec. ____-3.2. Exterior and Interior Lighting Affixed to New Structures, New Construction and Improvements to Existing Structures

1. All lighting affixed to the exterior of new permanent structures, construction or additions shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.
2. As an exception to -3.2.1. above, non-egress lighting may be affixed to the landward exterior of permanent structures provided that the fixtures are fitted with a long wavelength source and are not directly, indirectly, or cumulatively visible from any portion of the beach.

3. Lighting at egress points shall be limited to the minimum number of fixtures and foot-candles necessary to meet federal, state, and local safety requirements.
4. Locations including but not limited to stairwells, elevators, parking garages, or courtyards shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach. Light screens, shades or curtains shall be used to block visibility of interior lights from the beach. Light screens shall be used on open or enclosed staircases on the seaward or shore-perpendicular side of a building or for parking garages to limit visibility of lights from the nesting beach.
5. All glass windows, walls, railings and doors on the seaward and shore-perpendicular sides of any new construction shall use tinted glass with an inside to outside light transmittance value of 45 percent or less.

Guidance: Local governments may apply special considerations to control interior lighting from being directly visible from the beach.

6. Emergency lights are not subject to the above standards if on a separate circuit and activated only during power outtages or other situations in which emergency lighting is necessary for public safety.

Sec. ____-3.3. - Outdoor Areas

1. All lighting of outdoor areas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.
2. Lighting of paths, walks and routes of building access shall use low level fixtures such as step, paver, path, recessed wall or bollard lights. Bollard lights are not to exceed 42 inches in height and other low level fixtures are to meet the height requirements of FWC's Wildlife Lighting Guidelines. Fixtures shall be downward directed and utilize long wavelength lamps and beachside shields.
3. As an exception to -3.3.1. above, non-egress outdoor lighting may be installed landward of buildings or other opaque structures provided that they are fitted with long wavelength light sources and are not directly, indirectly, or cumulatively visible from any portion of the beach.
4. Internally or externally lighted signs shall not be located on the seaward and shore-perpendicular sides of any structures, and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
5. Ponds and fountains on the seaward and shore-perpendicular sides of any structures shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
6. Fire pits located on the seaward and shore-perpendicular sides of any structure shall be shielded with an opaque structure or partition, and positioned such that the flame is not directly, indirectly, or cumulatively visible from any portion of the beach. Bonfires and bonfire pits are prohibited within sea turtle nesting habitat during sea turtle nesting season.
7. Televisions or other illuminated screens shall be located landward of the dune and shall be shielded or positioned such that they are not directly, indirectly, or cumulatively visible from the beach.

Sec. ____-3.4. - Parking Areas and Roadways

1. All lighting of parking areas and roadways shall be long wavelength, downward directed, full cutoff, fully shielded, and mounted to the minimum level required to maintain compliance with federal, state and local law.
2. Parking area and roadway lighting shall be shielded from the beach via vegetation, natural features, or artificial structures rising from the ground. These shall prevent artificial light sources, including but not limited to vehicular headlights, from producing light that is directly, indirectly, or cumulatively visible from any portion of the beach.
3. Lighting of roadways and parking areas shall produce no more lighting than the minimum requirement as outlined by federal, state and local law.
4. Lighting of parking areas and roadways shall consist of either:
 - a. Ground-level downward-directed fixtures, equipped with interior dark-colored, non-reflective baffles or louvers, mounted either with a wall mount, on walls or piles, facing away from the beach, or
 - b. Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded on the side facing the beach, or
 - c. Pole-Mounted Lights, if required, shall adhere to the restrictions located in subsection -3.4.5.
5. Pole-mounted lights shall only be used in parking areas and roadways when mounting the lights at lower elevations cannot practicably comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety. If required, pole-mounted lights shall be:
 - a. Located on the landward sides of buildings and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach,
 - b. Mounted at the minimum height required to meet the minimum light level requirement-, and
 - c. Downward-directed onto non-reflective surfaces.

Guidance: Roadway and parking area lighting designed pursuant to Section 231.2.1 Wildlife-Sensitive Conventional Lighting of the Florida Department of Transportation (FDOT) Design Manual (January 1, 2020) available at <https://www.fdot.gov/roadway/fdm/default.shtm>, and meeting the requirements of Section 992-2.4.2, Luminaires for Wildlife-Sensitive Conventional Lighting, of the FDOT "Standard Specifications for Road and Bridge Construction (January 2020)," and available at <https://www.fdot.gov/programmanagement/implemented/specbooks/default.shtm>, are expected to meet the minimum standards of this section.

6. Equipment yards, storage yards, and temporary security lights shall also adhere to the lighting restrictions contained in this Section.

Sec. ____-3.5. - Pool Areas

1. Lighting of pool decks, pool facilities, swimming pools, and spas shall be long wavelength and fully shielded.
2. Lighting of the pool water surfaces and the pool wet deck surfaces shall comply with the minimum light levels set forth in applicable federal and state laws designed to protect public safety.
3. Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to the applicable requirements for acceptable light fixtures contained in Section 1 and Section 2 of this Section.
4. Underwater lighting of pools or spa light shall:
 - a. Be mounted horizontally in the wall,
 - b. Not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach, and
 - c. Shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. ____-3.6. - Beach Access Points and Dune Walkovers

1. Lighting of beach access points shall be located and configured to only illuminate areas landward of the beach and frontal dune. All lighting of beach access points shall be long wavelength, downward directed, full cutoff and fully shielded and shall not be directly, indirectly, or cumulatively visible from the beach.
2. Lights are allowable on dune walkovers or elevated boardwalks only as required for building code purposes and may only be installed landward of the frontal dune. Walkover lighting shall not be directly, indirectly or cumulatively visible from the beach.

Sec. ____-3.7. – Existing Exterior and Interior Lighting

1. Reduce or eliminate the negative effects of existing exterior artificial lighting through the following measures:
 - a. Reposition, modify or remove existing lighting fixtures so that the point source of light or any reflective surface of the light fixture is no longer directly, indirectly or cumulatively visible from the beach;
 - b. Replace fixtures having an exposed light source with fully shielded fixtures;
 - c. Replace any light source, light bulb or lamp that is not long wavelength (e.g. incandescent, fluorescent, or high intensity lighting) with the lowest wattage long wavelength (e.g. LED or low pressure sodium) light source or lamp available for the specific application;

- d. Replace non-directional fixtures with directional fixtures that point down and away from the beach;
 - e. Provide shields for fixtures visible from the beach and not practical to immediately be replaced. Beachside shields are to cover 270 degrees and extend below the bottom edge of the fixture on the seaward side so that the light source or any reflective surface of the light fixture is not visible from the beach;
 - f. Replace pole lamps with low-profile, low-level luminaries so that the light source or any reflective surface of the light fixture is not visible from the beach;
 - g. Plant or improve vegetation buffers between the light source and the beach to screen light from the beach;
 - h. Construct a ground level barrier landward of the beach and frontal dune to shield light sources from the beach. Ground-level barriers are to be considered a last resort when no other remediation of the light source is feasible. Ground level barriers may be subject to state coastal construction control line regulations under section 161.053, Florida Statutes, and must not interfere with sea turtle nesting or hatchling emergence, or cause short- or long- term damage to the beach and dune system;
 - i. Permanently remove or permanently disable any fixture which cannot be brought into compliance with the provisions of these standards.
2. Take one or more of the following measures to minimize interior light emanating from doors and windows within line-of-sight of the beach:
- a. Apply window tint or film that meets the light transmittance standards for tinted glass;
 - b. Rearrange lamps and other moveable fixtures away from windows;
 - c. Use opaque shades or room darkening window treatments (e.g., blinds, curtains, screens) to shield interior lights from the beach.

Guidance: In order to provide the highest level of protection for nesting marine turtles and their hatchlings, local governments are directed to adopt all of the above standards for existing artificial beachfront lighting sources.

Sec. ____-3.8. – Pier Structures

- 1. Lighting of pier structures projecting over the beach or over water shall be long wavelength, downward-directed, and fully shielded.
- 2. Lighting of pier structures projecting over the beach, or over water, shall be mounted no higher than 42 inches above the deck surface. These shall be directed onto the deck surface only, preventing light pollution or light spillage beyond the walking surface.
- 3. Lighting of pier structures projecting over the beach or over water shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Guidance: Note that the pier light standards do not address light sources from illuminated screens or signage associated with restrooms or bait shops on piers.

Sec. ____-3.9. - Special Events, Motor Vehicles, and Temporary Lighting

1. Lighting associated with a special event that may directly, indirectly, or cumulatively be visible from any portion of the beach shall not be authorized at nighttime during sea turtle nesting season.
2. The operation of all motorized vehicles, except emergency and law enforcement vehicles or those permitted on the beach for sea turtle conservation in accordance with Florida Statute 379.2431 (1), or other research and conservation, shall be prohibited on the beach at nighttime during sea turtle nesting season.
3. Within sea turtle nesting season, temporary work zone lighting for roadway construction and during declared emergencies shall be directed away from the beach to avoid illumination of or direct visibility from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the immediate construction area.
4. All other temporary construction lighting shall be:
 - a. Inclusive of all the standards of this Section, including using fixtures that are long wavelength, downward directed, full cutoff, and fully shielded so light is not directly or indirectly visible from the beach, and
 - b. Turned off during nighttime in sea turtle nesting season, or if authorized by the *Beach Lighting Inspector* during sea turtle nesting season, shall only be allowed from 6:00am to 9:00pm, must be restricted to the minimal amount necessary, and shall incorporate all the standards of this Section, and
 - c. Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of fixture, and
 - d. Restricted to the minimal number of foot-candles necessary to conform to the applicable construction safety regulations.
5. Handheld and other portable temporary lighting shall not be directed toward or used in a manner that disturbs sea turtles or other coastal wildlife.

SECTION ____-4. - COMPLIANCE AND ENFORCEMENT PROCEDURES

Sec. ____-4.1. - Beach Lighting Inspector

1. A position, known as the **City/County of _____** *Beach Lighting Inspector*, is hereby established.

Guidance: While the model creates a beach lighting inspector, local governments may choose to identify someone already on staff, such as a code enforcement officer, for the position. It is

most important that the designated individual receive appropriate training.

2. It shall be the duty of the City/County Manager to appoint the *Beach Lighting Inspector*. The *Beach Lighting Inspector* shall have the necessary training, technical knowledge, and resources to enable them to effectively carry out the duties of this office. The *Beach Lighting Inspector* may access resources provided by other local, state or federal agencies such as the *Sample Beach Lighting Survey Worksheet*, training, and other information available from the Florida Fish and Wildlife Conservation Commission.
3. The *Beach Lighting Inspector* shall be responsible for:
 - a. Inspecting the entire beach within the jurisdictional boundaries of the **City/County of _____** regularly during sea turtle nesting season to determine the extent of compliance with this Ordinance.
 - b. In the event of the finding of a violation at a particular public or private property, conducting further inspections at the property at any time beginning on the night after the deadline date given on the written notice of violation. These follow-up inspections shall continue until the lighting has been brought into compliance with this Ordinance.
 - c. *Beach Lighting Inspector* responsibilities may also include preparation of reports, issuance of non-compliance notices, outreach and education, supporting administrative actions before a review board or special magistrate, or attending building permit pre-application and pre-construction conferences.

Guidance: At minimum, night time lighting surveys and compliance inspections are recommended before and during sea turtle nesting season. Compliance inspections that are conducted frequently throughout the nesting season may be beneficial to local governments in identifying and addressing noncompliant lighting.

4. It shall be unlawful for any person to interfere with, or in any manner hinder the *Beach Lighting Inspector*, or any of their assistants, while in the discharge of their duties under the terms of this Ordinance.
5. It shall be unlawful for any person to knowingly conceal or disable any lighting on a property before it has been inspected by the *Beach Lighting Inspector*.

Sec. ____-4.2. - Notice of Violation

1. Upon finding any violation of this Ordinance, the *Beach Lighting Inspector* shall deliver a written notice of the violation of this Ordinance to the property owner and direct said owner to promptly remove or remediate lighting not in compliance with this Ordinance.
2. The time allowed for making the repairs shall be stated in the notice and should the responsible party neglect or refuse to remove or remediate non-compliance within the specified time stated in the notice, the party so offending shall commit a violation of this Ordinance and be penalized as provided in Subsection ____-4.3 of this Ordinance.

Sec. ____-4.3. - Penalties

1. Any person who takes any action or omission in violation of any provision of this Ordinance and fails to resolve such violation after proper notice is provided, shall be subject to a fine of up to \$ ____ per day per violation for initial violations, and \$ ____ per day per violation for repeat violations. All penalties incurred as a result of violation of this Ordinance shall continue to accrue until such violations are cured.
2. The **City/County of** _____ shall have the right to encumber such property in violation of this Ordinance with a lien for an amount equal to the total amount of fines owed at the time such lien is recorded.

Sec. ____-4.4. - Sea Turtle Fund

1. A *Sea Turtle Fund* is hereby established within the **City/County of** _____.
2. All funds collected as a result of the issuance of fines under Section 3 of this Part shall be deposited in the *Sea Turtle Fund*. The funds in this account shall be used for:
 - a. Assistance to property owners for the procurement of light systems equipment and materials that comply with this Ordinance and reduce the amount of artificial beach lighting,
 - b. Educational materials to inform the general public on the threats of artificial lighting to sea turtles, including but not limited to signs, door knockers, pamphlets, stickers, public service announcements, and other awareness campaigns, and
 - c. Equipment, materials and other resources supporting compliance assistance and enforcement by the *Beach Lighting Inspector*.
 - d. Other reasonable efforts to protect the sea turtle population within the **City/County of** _____, including but not limited to research and conservation projects.
3. The **City/County of** _____ may contribute funding from other sources into the *Sea Turtle Fund* for uses consistent with the purposes set forth above.

SECTION ____-5. - OTHER CLAUSES

Sec. ____-5.1. - Conflict with Other Ordinances

If this Ordinance conflicts with any other Ordinance or requirement of the **City/County of** _____, then this Ordinance shall control during sea turtle nesting season. Deviations from this Ordinance shall be subject to the variance procedures as established by this City/County.

Sec. ____-5.2. - Severability

If any Section or Subsection of this Ordinance is invalidated for any reason, the effected portion may be eliminated or modified to correct the reason of invalidation, if feasible without materially altering or negating the Ordinance Goals and the principles of sea turtle lighting.

Sec. ____-5.3. - Effective Date

The **City/County of** _____ Lighting Ordinance for Sea Turtle Protection shall become effective upon recommendation by _____ and approval by the _____.

1. Requested Motion:

Meeting Date: April 5, 2021

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE ("LDC"); PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE. Second reading and final adoption.

Why the action is necessary:

The applicant has requested a rezoning from RC to CPD. The Town Council held a first reading of the proposed ordinance on March 1, 2021. The second reading and public hearing are to consider approval, approval with conditions, or denial of the request.

What the action accomplishes:

Rezoning Ordinances require two readings. The first reading was March 1, 2021.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

The Town's Land Development Code requires all rezoning applications to be heard by the Town Council.

4. Submitter of Information:

5. Background:

The subject site is located at multiple addresses, 2661-2668 Estero, 125 School Street, and 131-151 School Street, at the intersection with Oak Street, School Street, and Estero Boulevard. The site is a combination of 12 lots platted as part of Winkler's subdivision in 1931 (Winkler's Subdivision, Block C, Lots 23-27 (2661-2668 Estero) Lot 28 (125 School Street) and Lots 29 – 34 (131-151 School Street). Each platted lot is approximately 25 feet in width and 150 feet in depth.

Based on information found on Lee County Property Assessor Field Cards, the six platted lots for 131-151 School Street appear to have been originally developed as three separate properties, each consisting of two of the platted lots, and each property having one structure. Property deeds show that the three individual properties came under common ownership by 1962 and have remained in common ownership since that time.

Prior Lee County zoning actions include Lee County Resolution Z-72-18 dated February 1, 1972 that granted a variance for an apartment under a duplex for personal home use on Lots 33 and 34. Additionally, ZVL2013-008 verified that the subject property consists of six plated lots.

Town records indicate that a rezoning to CPD was requested and denied by Town Council in 1996 (Res 96-31). The request was to build five multifamily dwelling units with commercial below. The original request was denied in February; while a revised and scaled down request was then denied in November 1996. The meeting minutes detail how the site was developed

with multiple older structures that were in poor condition; while the applicant pointed out that the request did not include hotel uses and no access from School Street. The Town Council findings included the proposed commercial uses were not appropriate in the Boulevard Future Land Use Map category due to intrusion of a commercial use into a residential neighborhood.

The current property configuration resulted from the combination of three separate parcels in 2008 (STRAP #s 19-46-24-W3-0020C.0290, 19-46-24-W3-0020C.0310 and 19-46-24-W3-0020C.0330), and the addition of the remaining parcels comprising the the subject site, 2661-2668 Estero Blvd. and 125 School Street, in 2016 after the Town Council granted a special exception to allow a Bed and Breakfast use (only on the added parcels). According to the current Lee County Property Appraiser records, the 2661-2668 Estero Boulevard consists of two single-family dwelling units; and one single-family dwelling with an apartment.

The current application requests a rezoning from the RC zoning district to CPD. All CPD rezoning applications are required to have a master concept plan, which the applicant submitted, identifying proposed development and how development is consistent with the Town's Comprehensive Plan and Land Development Code.

The applicant has provided a narrative with the original application in Supplemental PH-D documents explaining how it believes the proposed rezoning and master concept plan are consistent with the Comprehensive Plan, Land Development Code (including LDC Sec 34-85), and the Town's Design Guidelines. The original application requested 16 guest/hotel units developed over multiple phases. Since the original application, the applicant has responded to staff questions and review comments by submitting revised components of the request and the master concept plan. There have been two resubmittals containing modifications to the original application. The final submittal includes a request to allow 14 guest/hotel units over multiple phases; 600 sq. ft. of retail use, a restaurant, and rearranged building(s) to accommodate parking, stormwater, and other site modifications. The Schedule of Uses also includes Residential and Residential Accessory uses. Staff disagrees and questions why these are mixed with the requested Lodging and Retail uses.

In addition the last submitted plan includes an update to requested deviations. The current request includes seven (7) deviations to various design and development criteria. The deviations requested would allow the applicant to decrease landscape buffers, setbacks, and design criteria, among others. Some of the deviations are to accommodate existing buildings with non-conforming setbacks, access location point separation, and parking space size.

The staff report specifies why the request is inconsistent with the Town's Comprehensive Plan and Land Development Code. Staff has recommended denial based on the findings in the staff report.

The LPA reviewed the application on February 9th, 2021 and recommended approval with conditions with a 6-0 vote.

Town Council set the second reading of the Ordinance and public hearing for April 5, 2021.

The applicant has provided an amended Master Concept Plan showing edits since the LPA meeting. They have also submitted the following proposed conditions of approval:

1. On Premises Consumption of alcoholic beverages (COP) shall be limited to the future restaurant and existing Tiki hut as identified on the Master Concept Plan.
2. COP hours of service for the outdoor seating associated with the restaurant shall be limited to 10AM-10PM.
3. Amplified sound associated with the outdoor restaurant seating shall be limited to 10AM-

10PM.

The applicant provided proposed conditions of approval and a draft Ordinance, which has been included with the attachments.

Attachments:

1. Ordinance 21-02 re Myerside
2. Myerside Supplemental Staff Report Town Council 2nd reading_rev
3. Myerside CPD Rezoning Staff Report TC
4. Myerside Applicant Proposed Ordinance Conditions
5. Draft 02.09.2021 LPA minutes
6. Myerside MCP 02-16-2021 Clouds
7. Schedule of Deviations (track changes)11-24-2020
8. 11-17-2020 P. Vanasse Response Letter to Jason Green and request to be scheduled for LPA(15932302_1)
9. DCI 2020009 Response to insufficiency July 2020
10. DCI 2020009 MYERSIDE REZONING APP
11. DCI 2020009 MYERSIDE REZONING SUPPLEMENTAL PH-D APP
12. Resolution 96-31 Denying rezoning to CPD for 5 multifamily units
13. 11.18.1996 Town Council Regular Minutes
14. SEZ2015-0006 MYERSIDE BNB TC Staff Report
15. 16-09, SEZ2015-0006 131-151 SCHOOL ST MYERSIDE B AND B FINAL

Financial Impact:

6. Alternative Action

Recommend approval or approval with conditions

7. Management Recommendations:

Deny

8. Recommended Approval:

Jason Green, Community Development Services
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/29/2021
Approved - 3/29/2021
Approved - 3/31/2021
Approved - 3/31/2021
Final Approval - 3/31/2021

ORDINANCE 21-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE (“LDC”); PROVIDING FOR SCRIVENER’S ERRORS AND AN EFFECTIVE DATE.

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

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

WHEREAS, Myerside LLC, owner and applicant (“Applicant”), filed an application to rezone the property generally located at 131-151 School Street, 125 School Street, and 2661-2681 Estero Boulevard – comprising 1 +/- acre of land (“Property”), from Residential Conservation (RC) to Commercial Planned Development (CPD) with a Master Concept Plan (MCP), a schedule of uses, and deviations to certain requirements of the Land Development Code (“LDC”), in order to develop a 14 unit hotel/resort with restaurant, retail, and consumption of alcohol on premises (“Application”); and

WHEREAS, the Property is located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the Applicant as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on February 9, 2021, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6-0 to recommend approval of the rezoning and MCP with conditions, and

WHEREAS, on March 1, 2021 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on April 5, 2021; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, including the consideration and findings in the staff report, 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 finds the proposed rezoning and MCP and requested deviations are **consistent/not consistent** with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code and voted to **approve/approve with conditions/deny** the Application.

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

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

Section 2. The Town Council determines the Applicant **did/did** not meet its burden of proof that the requested rezoning **does/does not** meet the requirements of the Town Comprehensive Plan and LDC, and approving the rezoning of the Property from Residential Conservation (RC) zoning district to Commercial Planned Development (CPD) with a Master Concept Plan (MCP), a schedule of uses, and a deviation to certain requirements of the LDC **is/is not** in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/DENIES** the requested rezoning.

Section 3. In approving the rezoning of the Property, the following conditions of approval are imposed on the Applicant and the Property:

1. Schedule of Uses: Rental of any cottage for a stay of one night or longer (Maximum 12 Overnight Cottages); Caretaker Unit (not an additional unit); Accessory Swimming Pool and Sand Volleyball as shown on the MCP; all limited to the size and location on the MCP.
2. Phase 1 shall be completed in its entirety and not in subphases.
3. All phases shall be complete within five years of approval of the Ordinance.
4. A complete Development Order application for the project shall be submitted within one year of approval of the Ordinance.
5. No site or building permits shall be approved until a completed Development Order is approved.
6. A report by professional Arborist identifying the on-site trees shall be submitted no later than with the application for a Development Order. Any trees scheduled for removal and listed as protected within the Town's Land Development Code at the time of submittal, shall be replaced in-kind and measured based on the individual Diameter Breast Height (DBH) method.

7. A landscape plan prepared by a Florida licensed Landscape Architect shall include a statement to the viability of the selected vegetation within the approved buffer. All landscape buffers at a minimum shall be consistent with the LDC.
8. Prior to submitting a Development Order application, the property owner shall be responsible for amending the Future Land Use Map to remove the Platted Overlay designation.
9. Prior to approval of a Development Order, the property owner shall vacate the platted lots.
10. The property, buildings, and units shall remain under unified control.
11. All accessory structures shall be improved with required flood vents.
12. All accessory structures shall be limited to the specific purpose, size, and location on the MPC.
13. All structures shall be limited to their existing footprint and square footage. No combination or consolidation of square footage shall be permitted.
14. Public ingress to the parking lot shall be limited to Estero Boulevard.
15. Public egress from the parking lot shall be allowed on School Street unless when a compliant visibility triangle can be demonstrated.
16. No parking or access onto or through Oak Street.
17. The MCP shall comply with all parking design standards, including stall length and width, drive aisle width, and all applicable ADA standards.
18. The western property boundary shall be considered a Side Yard and Side Setback for purposes of this MCP only.
19. No fill allowed other than to level low spots to be consistent with the site.
20. All parking which stacks vehicles shall be operated valet, but without utilizing the public right-of-way or roads to reorganize vehicles. Restaurant parking shall be identified on the MCP.
21. Design, permit, and construct a Town approved sidewalk along School Street to connect Estero Boulevard to Oak Street.
22. Reduce access along Estero Boulevard to one access point, which shall also require approval by Fort Myers Beach, FMB Fire District, and Lee County.
23. A landscape entry-way consistent with the Town's Comprehensive Plan vision for the School Street corridor shall be provided adjacent to School Street.
24. A public plaza with appropriate community engagement features, such as public art, benches, and other components shall be incorporated into the frontage along Estero Blvd. and School Street.
25. No outdoor events or amplified sound is permitted unless approved by the Town Council as part of a Special Event.
26. No sales or consumption of alcohol in any outdoor areas.
27. All stormwater management systems constructed on-site shall be certified every five years by a licensed Professional Engineer stating the system is operational and functions as designed.
28. A Florida licensed Architect shall document the type/style and historical relevance of the architecture of existing structures. All renovations and future replacement of buildings require consistency with identified architectural style.
29. Voluntarily record covenants which run with the land to maintain and keep the cottages; or replace with aesthetically-like structures.

30. Failure to comply with any conditions of approval shall render the Master Concept Plan null and void, including any incomplete portions or phases.
31. Failure to comply with any approved conditions, timelines, or maintaining consistency with the Master Concept Plan shall result in a fine of \$500 per day, per incident, appealable to the Special Magistrate.

Section 4. The following limits apply to the Property and its development or redevelopment:

Schedule of Allowable Uses*:

- Rental of any cottage for a stay of one night or longer (12 rental units)
- Caretaker Unit (not an additional unit)
- Accessory Pool and Sand Volleyball as shown on the MCP
- Restaurant and Public Services - To the extent uses can fit on the property without deviations, they can also be included.

*All uses limited to size and location shown on the MCP

Property Development Regulations:

Regulations generally consistent with the LDC:

- Principal Structures: Consistent with the LDC
- Minimum Street Setback: Consistent with the LDC
- Side Setbacks: Consistent with the LDC
- Rear Setback: Consistent with the LDC
- Minimum Lot Area: 1 acre +/- (surveyed acreage)
- Minimum Lot Width: Consistent with the existing property and MCP
- Minimum Lot Depth: Consistent with the existing property and MCP

Regulations generally consistent with existing conditions:

- Building Coverage: Existing and Proposed Buildings
- Maximum Stories: Three (Two Stories above Base Flood Elevation)
- Maximum Height: 25 feet above Base Flood Elevation
- Minimum Building Separation: 15 feet
- Minimum Open Space: 50%
- Maximum Floor Area Ratio: Existing and Proposed Building Calculations 1) One Story, Restaurant, +/-700 SF; 2) Two Stories, Two Units, +/- 950 SF; 3) One Store, Retail, +/- 700 SF; 4) Partial Two Story, One Unit, +/- 900 SF; 5) Two Stories, Two Units, +/- 1,393 SF; and Office/Front Desk, 269 SF; 6) Two Stories, Four Units, +/- 3,122 SF; 7) One Story, One Unit, +/- 504 SF; 8) Two units within existing structures (TBD)
- Maximum Impervious Surface Ratio: 50%

Section 5. The Applicant has requested the following deviation, which the Town Council **does/does not** grant:

DEVIATION #1: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 15' side setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow $\pm 6.9'$ for Building 1, $\pm 4.3'$ for Building 7 and $\pm 7'$ for Building 8.

DEVIATION #2: A deviation from LDC Section 34-1174(2)(a) that requires accessory structure setbacks to be the same as principal structures or 15' to allow a 3' side setback for the accessory structure associated with Building 7 and $\pm 5.9'$ for the accessory garage associated with Building 4.

DEVIATION #3: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 10' street setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow a $\pm 2.6'$ for Building 3.

DEVIATION #4: A deviation from LDC Section 34-2015 (5), which requires that "all parking lots must be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion...", to allow exiting vehicles to leave parking spaces by backing onto School or Oak Streets only as depicted on MCP.

DEVIATION #5: A deviation from the driveway separation requirements of LDC Section 10-296 along Estero Boulevard to allow a driveway access to the subject property that is $\pm 77'$ from the closest access point (driveway) to the north and $\pm 77'$ to School Street.

DEVIATION #6: 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 6' Type C buffer as indicated on the Master Concept Plan limited to the west property line.

DEVIATION #7: A deviation from LDC Section 34-202(b)(5), which requires architectural elevations or a three-dimensional rendering, to approve the design of existing structures subject to Section 3 CONDITION 4 regarding the design of any new or relocated structures.

Section 6. Nothing in this rezoning, including any of the attached conditions, constitute a variance or deviation from the provisions of Chapter 6, Article IV "Floodplain Regulations" of the LDC. Approval of this rezoning does not exempt the subject property from any provisions of the LDC with the exception of any approved deviation contained herein.

Section 7. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance or statute, the most restrictive shall apply.

Section 8. 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 9. Any typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. This ordinance shall become effective upon adoption by the Town Council.

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

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this _____ day of _____, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this __ day of _____, 2021.



**COMMUNITY DEVELOPMENT DEPARTMENT
SUPPLEMENTAL STAFF REPORT**

TYPE OF CASE: Rezoning to Commercial Planned Development (CPD) with deviations.

CASE NUMBER: DCI20200009 - Myerside

STAFF RECOMMENDATION: Denial of request to rezone to Commercial Planned Development. The request is inconsistent with the Comprehensive Plan and Land Development Code.

LPA RECOMMENDATION: Approval

APPLICATION SUMMARY

Applicant: Myerside LLC / Beverly Grady, Roetzel and Andres

Request: To rezone 1+/- acre of land from RC to CPD with a mix of commercial uses as part of their Schedule of Uses, including Hotel, Resort, Multifamily, Single-family, Retail, Restaurant, and Consumption on Premises.

Subject property: 2661-2668 Estero Blvd., 125 School St., 131-151 School St.

FLU: Pedestrian Commercial

STRAP #: 194624W30020C.0230; -.0270; and -.0290

Existing Zoning: Residential Conservation

FLUM: Boulevard

Proposed Zoning: Commercial Planed Development

Current use(s): Single-family residential; Bed and Breakfast

Proposed use(s): Hotel, restaurant, retail, residential (See Schedule of Uses)



Adjacent zoning and land uses:

North:	Bay Oaks Park, Fort Myers Beach Elementary School (Institutional)
South:	Estero Blvd, Multifamily, Office, and Resort (Residential Multifamily, CO, CR)
East:	School St. FMB Library, FMB United Methodist, (Institutional)
West:	Single-family residences, Bay Oaks Park (RC, Institutional)

BACKGROUND AND ANALYSIS

Background:

Town Staff presented a Staff Report recommending denial at the March 1, 2021 Town Council meeting as part of the first reading of the Ordinance. At that meeting, the Town Council voted to set a second hearing to consider approval of the request to rezone the subject property from RC to CPD. Town Council directed staff to prepare conditions of approval and recommendations related to deviations and other elements of the application and Master Concept Plan (MCP).

This Report provides a number of issues for the Town Council to consider prior to reaching a decision. These items include a review of the MCP, Deviations, Site Plan, and other elements required by the Comprehensive Plan and Land Development Code (LDC). The first reading Staff Report and recommendation of denial has also been provided.

I. Allowable Intensity / Equivalency Factor Deviation

The subject site is located within the Boulevard Future Land Use Category. Per LDC Sec 34-1803, “guest units” can be substituted for dwelling units based on an equivalency factor calculation that requires consideration of both the future land use category, in this case Boulevard, and the equivalence factor, which is determined based on the square feet of the proposed guest units. Myerside has proposed units ranging between 450 and 750 square feet. The applicable equivalency factor for Boulevard with 450-750 square feet is 2.0.

The Boulevard category allows up to six (6) dwelling units per the Town’s Comprehensive Plan. As discussed in the Staff Report and contrary to the applicant’s statements, the Platted Overlay calculation does not apply since Policy 4-B-5 clearly states the Overlay applies to legally existing dwelling units, not new uses or redevelopment.

Staff’s analysis is simple, the proposed project is one acre. The equivalence factor calculates as follows: 1(ac) x 6(dwelling units per Boulevard) x 2(equivalency factor) = maximum 12 guest units.

LDC Sec 34-1803 (a)(2) outlines specific provisions where guest units may exceed the equivalence factor. However, in order to exceed the equivalence factor, the Town Council must grant a



specific deviation to an equivalency factor greater than 2.0 based on requirements described below:

- a. **All other aspects of the development (height, traffic, intensity of use, etc.) are compatible with the surrounding area;**

Staff has provided a report indicating that the proposed use, including outdoor alcohol consumption on premises and the type of development; the proposed landscaping and access plan, are not consistent with the surrounding area. Additional aspects of development identified by the LDC include setbacks, landscaping, parking design and amount, among other requirements. If Town Council determines that the project is potentially compatible, then Staff recommends the Town Council identify specifically what aspects of the development are compatible.

- b. **The proposal clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan;**

Staff has found that the proposal does not clearly exceed all of the standards for the Fort Myers Beach Comprehensive Plan. Specifically, the proposal has not addressed the proposed new commercial's contribution to the "public realm" or "pedestrian character" identified in Policy 4-C-3. Comprehensive Plan Page 4-25 states:

New commercial establishments can interfere with the "private realm" of a community (the personal spaces in and around homes and condominiums). At the same time, these establishments often contribute little or nothing to a community's "public realm," which includes streets, sidewalks, and plazas where residents and visitors interact. The Town can insist on the protection of its private realms and the enhancement of its public realm when evaluating proposals for new commercial development.

The proposed MCP does not provide for any enhancements to the public realm as described in and required by the Comprehensive Plan. Staff recommends the Town Council requires compliance with the provisions of the Comprehensive Plan by contributing to the public realm through a variety of site and public facility improvements in order to be consistent with the required findings of this section of the LDC.

In addition, the proposed MCP and application requests several deviations impacting the public realm, such as, reducing setbacks, which allows a greater intensity of development throughout the site. Staff recommends not approving the reduced setbacks.

- c. **In no case can equivalency factor increases exceed the maximum intensities allowed by the Fort Myers Beach Comprehensive Plan.**



Although the proposed master concept plan does not exceed the maximum floor area ratio allowed within the Boulevard category, this is only one consideration, there are other concerns.

Allowable Intensity Summary:

- The MCP submitted by the applicant doesn't meet the criteria to grant a deviation to the equivalency factor. In fact, the applicant is not curing existing deficiencies but requesting additional deviations to development standards in order to increase density and intensity. **Staff recommends denial of the deviation to the equivalency factor.**
- The applicant has not provided the additional improvements that match stated examples within the Comprehensive Plan related to the public realm and pedestrian character to exceed the maximum equivalency factor of 2 or the maximum 12 units, to be consistent with LDC Sec 34-1803 (a)(1). **Staff finds the application does not provide any improvements to the public realm or pedestrian character.**

II. Applicant's Schedule of Uses Request and Staff Analysis:

The applicants proposed rezoning application and MCP includes a requested Schedule of Uses, which controls the proposed and potentially future uses of the property. The proposed schedule requests a variety of commercial and residential uses to achieve hotel/resort status, but also attempts to retain benefits of the existing zoning, many of which are internally inconsistent with the Town's Land Development Code.

A. Residential

The applicant requested the following residential uses within the Schedule of Uses:

Dwelling units, single or 2- unit multifamily
Accessory Apartment or residential accessory uses

Therefore, if the intent is to convert the existing cottages and on-site structures to guest units, none of the requested residential uses are necessary and only complicate or confuse the development approval. In order to provide for a mixed use development with residential uses, additional density would be required to be assigned to the property.

Staff recommends removal of these residential uses from the Schedule of Uses.

B. Lodging

The applicant requested the following Lodging uses within the Schedule of Uses:

Bed and Breakfast, Hotel/Motel, Guest Units
Rental of any permitted unit for periods of one day or longer
Resort
On-premises consumption of alcoholic beverages – limited to the Restaurant and Tiki Bar



Resort Accessory Uses
Personal Services
Recreational Facilities
Caretaker Unit

The proposed uses conflict with each other and several are not permitted or are inconsistent with the Land Development Code. Typically, developments that offer guest units for overnight stays don't apply all four terms, as was done by the applicant: Bed and Breakfast, Hotel and Motel, Guest Units. LDC Sec 34-1801 provides Definitions and General Requirements for Hotels/Motel and Bed and Breakfast. The proposed Schedule of Uses does not meet several of the requirements outlined in Sec 34-1801 (a), see below:

Sec. 34-1801. - Definitions and general requirements.

(a) The following definitions from § 34-2 of this chapter are repeated here for convenience:

- (1) Bed-and-breakfast inn means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings.*
- (2) Guest unit means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with partial or full kitchens.*
- (3) Hotel/motel means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer.*
- (4) Lock-off accommodations means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry or share a common foyer with separate lockable interior doors, or may share a lockable door or doors separating the two units.*

Sec 34-1801 (b) goes on to state:

(b) Hotels/motels and bed-and-breakfast inns must:



- (1) *Be licensed as transient public lodging establishments with the Florida Department of Business and Professional Regulation; and*
- (2) *Pay the levied tourist development tax promulgated by the county and the state sales tax; and*
- (3) *Provide and staff a front desk during regular business hours to arrange for the rental of guest units; and*
- (4) *Guest units may not be occupied by the same guest for more than 60 days in any year. "Guest" includes the guest's children and parents. "Year" means the period beginning October 1 and ending September 30 of each successive year.*

Hotels/motels and bed-and-breakfast inns which do not meet these requirements will be subject to enforcement action (see § 34-266 of this chapter). Proposed developments that will not meet these requirements will not be approved as hotels/motels or bed-and-breakfast inns; if approved instead as multiple-family buildings, they will be subject to the density limitations and property development regulations for multiple-family buildings.

Staff recommends that the Town Council require compliance with the above referenced sections of the LDC or deny the request. Alternatively, the Town Council may very well consider forgoing all of the terms and uses used under Lodging and assign a unique term for this planned development, such as "Overnight Cottages," or "Rental of any cottage unit for periods of one day or longer."

The unique limited use would be assigned specific controls and conditions to ensure appropriate function and not approve an expansive or more intense use than intended. See conditions in Sectin IV of this report.

C. Resort

The applicant has requested "Resort" as part of their Schedule of Uses. The proposed CPD and MCP are clearly inconsistent with the Land Development Code definition of "Resort." See below for the definition:

Resort means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which include a combination of dwelling units and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.



Based on the definition provided for “Resort” from the Land Development Code and the maximum density/intensity permitted within the Boulevard category, the site can never be approved for 50 guest units, thus the use cannot be approved as part of the Schedule of Uses.

D. Lodging Accessory Uses

The applicant’s request for Lodging Accessory Uses is not consistent with the definitions and development standards of the Land Development Code. The proposed use(s) and MCP clearly do not qualify as a “Resort,” as such, **Resort Accessory Uses cannot be approved.**

E. Recreation Facilities

The applicant requested “Recreation Facilities,” which has broad and varied subdefinitions per the LDC. The term “Recreation Facilities” has the potential to permit a variety of large recreation facilities, both public and private, which can have significant impacts on traffic and surrounding uses.

Recreation facilities.

- (1) *Recreation facilities, commercial* means recreation equipment or facilities not classified as a park, neighborhood or park, community or regional, or as personal, private-on-site, or private-off-site recreation facility, but instead operated as a business and open to the public for a fee. (Golf courses are defined separately in this section.)
- (2) *Recreation facilities, personal* means recreation equipment or facilities such as swimming pools, tennis, shuffleboard, handball or racquetball courts, swings, slides, and other playground equipment provided as an accessory use on the same premises and in the same zoning district as the principal permitted use and designed to be used primarily by the owners, tenants, or employees of the principal use and their guests. See *Residential accessory use*.
- (3) *Recreation facilities, private on-site* means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or, operated by a homeowners', co-op, or condominium association and located in the development or neighborhood controlled by the association.
- (4) *Recreation facilities, private off-site* means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or operated by a homeowners', co-op, or condominium association for use by the association's members and guest, but which are not located in the development or neighborhood controlled by the association.



- (5) *Recreation facility, public* means a recreation facility operated by a governmental agency and open to the general public.

Staff recommends limiting the recreation uses within the Schedule of Uses to a single swimming pool and volleyball court, both limited in size and location shown on the Master Concept Plan.

F. Personal Services

The applicant has requested Personal Services as a use without identifying where it will be located. Personal Services are the care for person or their goods, such as a beauty salon, health club, or laundry drop-off. It could be used within the same footprint as the Retail use instead of Retail or in conjunction, but wasn't identified.

Staff recommends specifically labeling one of the existing cottage buildings and assigned square footage of such buildings for the Retail or Personal Services uses on the MCP.

G. Consumption on Premises

On-premises consumption of alcoholic beverages – limited to the Restaurant and Tiki Hut is a requested use within the Lodging use category. The Tiki Hut and Restaurant are both within 500 feet of a public park, public school, and multiple residences. The proposed location of **these activities requires the Town Council's approval of a deviation** from the Town's separation requirements. **Staff recommends denial. Lee County School District recommends denial.**

The request does not include on-premises consumption of alcoholic beverages in the outdoor seating area of the restaurant. The MCP labels Building 1 with the "COP" note internal to the restaurant (MCP Sheet 3 of 4). Enclosed restaurants are exempt from the separation criteria per the Town's LDC and Florida Law; however, outdoor seating areas are not. **If a restaurant use is approved as part of the CPD, the restaurant should (although extremely difficult to enforce) be prohibited from serving or permitting open containers of alcohol external to the restaurant. As difficult as it may be to identify and enforce any alcohol violations, the standard recommendation is to include a condition of approval for a \$500 fine per incident, per day to the property owner.**

The applicant has submitted recommended conditions of approval related to the Consumption on Premise (included with packet) and as part of their draft Ordinance. Portions of the proposed conditions, such as "payment for alcohol shall be made inside the restaurant only" are essentially unenforceable and provide no mitigation to the use or separation from other uses issue.



Staff Schedule of Uses Summary:

The remaining requested uses are unnecessary and conflict with the Town's LDC. If the Town Council is inclined to approve the MCP, the Schedule of Uses should be limited to only the primary use being requested and the specifically stated and limited recreation activities shown on the MCP and adopted by Town Council. Staff proposed a Schedule of Uses below:

Staff Proposed Schedule of Uses*

- Rental of any cottage for a stay of one night or longer (12 rental units)
- Caretaker Unit (not an additional unit)
- Accessory Pool and Sand Volleyball as shown on the MCP
- Restaurant and Public Services - To the extent uses can fit on the property without deviations, they can also be included.

*All uses limited to size and location shown on the MCP

III. Applicant's Requested Deviations

DEVIATION #1: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 15' side setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow $\pm 6.9'$ for Building 1, $\pm 4.3'$ for Building 7 and $\pm 7'$ for Building 8.

Staff Analysis: Deviations should not be granted to expand intensity/density of uses beyond the physical limits of the property. Any setback deviation granted is for the life of the existing cottage only.

DEVIATION #2: A deviation from LDC Section 34-1174(2)(a) that requires accessory structure setbacks to be the same as principal structures or 15' to allow a 3' side setback for the accessory structure associated with Building 7 and $\pm 5.9'$ for the accessory garage associated with Building 4.

Staff Analysis: Deviations should not be granted to expand intensity/density of uses beyond the physical limits of the property. Any setback deviation granted is for the life of the existing cottage only.

DEVIATION #3: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 10' street setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property*



development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...) to allow a $\pm 2.6'$ for Building 3.

Staff Analysis: Deviations should not be granted to expand intensity/density of uses beyond the physical limits of the property. Any setback deviation granted is for the life of the existing cottage only.

DEVIATION #4: A deviation from LDC Section 34-2015 (5), which requires that “all parking lots must be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion...”, to allow exiting vehicles to leave parking spaces by backing onto School or Oak Streets only as depicted on MCP.

Staff Analysis: A cohesive parking/traffic pattern is not provided. The proposed parking spaces along School Street are not large enough to accommodate typical vehicles and are not consistent with the Town’s LDC parking design requirements. A deviation to allow vehicles to exit in a reverse motion instead of forward creates a visibility conflict with the garage structure identified on the MCP. Vehicles backing out of the driveway next to the garage will be required to be approximately in the travel lane to see traffic coming north on School Street or traffic exiting the proposed parking lot driveway labeled “egress only.”

DEVIATION #5: A deviation from the driveway separation requirements of LDC Section 10-296 along Estero Boulevard to allow a driveway access to the subject property that is $\pm 77'$ from the closest access point (driveway) to the north and $\pm 77'$ to School Street.

Staff Analysis: Requires final approval and permitting from Lee County. Any modifications require the property owner to submit an amendment to the MCP. Town Council should determine if this request is a traffic pattern or marketing need.

DEVIATION #6: 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 6' Type C buffer as indicated on the Master Concept Plan limited to the west property line.

Staff Analysis: Unless existing, the use of setbacks and buffers to allow increase of density / intensity of the property shouldn't be approved. The property owner shouldn't gain a economic windfall by being granted landscaping deviations. Additionally, the request fails to take into account substantial room along the west property line where an LDC compliant buffer can be provided. No analysis or professional assessment has been provided that the required type and



number of plants can survive and not create encroachment issues within the narrower buffer area. No plan has been submitted to mitigate an granted landscape reductions.

DEVIATION #7: A deviation from LDC Section 34-202(b)(5), which requires architectural elevations or a three-dimensional rendering, to approve the design of existing structures subject to Section 3 CONDITION 4 regarding the design of any new or relocated structures.

Staff Analysis: No documents provided. The applicant shall have a qualified professional document the architectural type/style while be limited to specific size and location.

Additional Deviations Needed To Approve Applicant's MCP:

- Parking lot design is not consistent with LDC Sec 34-2016. Approval without a deviation shall require compliance with the LDC, including but not limited to 22' drive ailes.
- Consumption on Presmise less than 500 feet from a church, school, park, or residence
- Equivelancy Factor of 2.33

IV. Staff Proposed Conditions of Approval

1. Schedule of Uses: Rental of any cottage for a stay of one night or longer (Maximum 12 Overnight Cottages); Caretaker Unit (not an additional unit); Accessory Swimming Pool and Sand Volleyball as shown on the MCP; all limited to the size and location on the MCP.
2. Phase 1 shall be completed in its entirety and not in subphases.
3. All phases shall be complete within five years of approval of the Ordinance.
4. A complete Development Order application for the project shall be submitted within one year of approval of the Ordinance.
5. No site or building permits shall be approved until a completed Development Order is approved.
6. A report by professional Arborist identifying the on-site trees shall be submitted no later than with the application for a Development Order. Any trees scheduled for removal and listed as protected within the Town's Land Development Code at the time of submittal, shall be replaced in-kind and measured based on the individual Diameter Breast Height (DBH) method.
7. A landscape plan prepared by a Florida licensed Landscape Architect shall include a statement to the viability of the selected vegetation within the approved buffer. All landscape buffers at a minimum shall be consistent with the LDC.
8. Prior to submitting a Development Order application, the property owner shall be responsible for amending the Future Land Use Map to remove the Platted Overlay designation.



9. Prior to approval of a Development Order, the property owner shall vacate the platted lots.
10. The property, buildings, and units shall remain under unified control.
11. All accessory structures shall be improved with required flood vents.
12. All accessory structures shall be limited to the specific purpose, size, and location on the MPC.
13. All structures shall be limited to their existing footprint and square footage. No combination or consolidation of square footage shall be permitted.
14. Public ingress to the parking lot shall be limited to Estero Boulevard.
15. Public egress from the parking lot shall be allowed on School Street unless when a compliant visibility triangle can be demonstrated.
16. No parking or access onto or through Oak Street.
17. The MCP shall comply with all parking design standards, including stall length and width, drive aisle width, and all applicable ADA standards.
18. The western property boundary shall be considered a Side Yard and Side Setback for purposes of this MCP only.
19. No fill allowed other than to level low spots to be consistent with the site.
20. All parking which stacks vehicles shall be operated valet, but without utilizing the public right-of-way or roads to reorganize vehicles. Restaurant parking shall be identified on the MCP.
21. Design, permit, and construct a Town approved sidewalk along School Street to connect Estero Boulevard to Oak Street.
22. Reduce access along Estero Boulevard to one access point, which shall also require approval by Fort Myers Beach, FMB Fire District, and Lee County.
23. A landscape entry-way consistent with the Town's Comprehensive Plan vision for the School Street corridor shall be provided adjacent to School Street.
24. A public plaza with appropriate community engagement features, such as public art, benches, and other components shall be incorporated into the frontage along Estero Blvd. and School Street.
25. No outdoor events or amplified sound is permitted unless approved by the Town Council as part of a Special Event.
26. No sales or consumption of alcohol in any outdoor areas.
27. All stormwater management systems constructed on-site shall be certified every five years by a licensed Professional Engineer stating the system is operational and functions as designed.
28. A Florida licensed Architect shall document the type/style and historical relevance of the architecture of existing structures. All renovations and future replacement of buildings require consistency with identified architectural style.
29. Voluntarily record covenants which run with the land to maintain and keep the cottages; or replace with aesthetically-like structures.



30. Failure to comply with any conditions of approval shall render the Master Concept Plan null and void, including any incomplete portions or phases.
31. Failure to comply with any approved conditions, timelines, or maintaining consistency with the Master Concept Plan shall result in a fine of \$500 per day, per incident, appealable to the Special Magistrate.

Staff Proposed Property Development Regulations:

Regulations generally consistent with the LDC:

- Principal Structures: Consistent with the LDC
- Minimum Street Setback: Consistent with the LDC
- Side Setbacks: Consistent with the LDC
- Rear Setback: Consistent with the LDC
- Minimum Lot Area: 1 acre +/- (surveyed acreage)
- Minimum Lot Width: Consistent with the existing property and MCP
- Minimum Lot Depth: Consistent with the existing property and MCP

Regulations generally consistent with existing conditions:

- Building Coverage: Existing and Proposed Buildings
- Maximum Stories: Three (Two above Base Flood Elevation)
- Maximum Height: 25 feet above Base Flood Elevation
- Minimum Building Separation: 15 feet
- Minimum Open Space: 50%
- Maximum Floor Area Ratio: Existing and Proposed Building Calculations 1) ONE STORY, RESTAURANT, +/- 700 SF 2) TWO STORIES, TWO UNITS, +/- 950 SF 3) ONE STORY, RETAIL, +/- 700 SF 4) PARTIAL TWO STORY, ONE UNIT, +/- 900 SF 5) TWO STORIES, TWO UNITS, +/- 1,393 SF AND RESORT OFFICE, 269 SF 6) TWO STORIES, FOUR UNITS, +/- 3,122 SF 7) ONE STORY, ONE UNIT, +/- 504 SF 8) TWO STORY, FOUR UNITS, 1,600 SF
- Maximum Impervious Surface Ratio: 50%

Prepared by: Jason W. Green, AICP, CFM



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Commercial Planned Development (Rezoning)

CASE NUMBER: DCI2020009

CASE NAME: Myerside CPD

LPA

HEARING DATE: February 9, 2021

TOWN COUNCIL

HEARING DATE: March 1, 2021 First Reading of Ordinance

STAFF RECOMMENDATION: Denial of request to rezone to Commercial Planned Development. The request is inconsistent with the Comprehensive Plan and Land Development Code.

PREPARED/SUBMITTED BY: Jason Green, AICP, CFM

I. APPLICATION SUMMARY

Applicant/Agent: Myerside LLC / Beverly Grady, Roetzel and Andres

Request: To rezone 1+/- acre of land from RC to CPD with a mix of commercial uses as part of their Schedule of Uses, including Hotel, Resort, Multifamily, Single-family, Retail, Restaurant, and Consumption on Premises.

Physical Address: 2661-2668 Estero Blvd., 125 School St., 131-151 School St.

STRAP #: 194624W30020C.0230; -.0270; and -.0290

FLUM: Boulevard

Zoning: Residential Conservation

Current use(s): 2661-2668 Estero – Single-family (2) and a duplex; 125 School St. – Single-family; 131-151 School St – Bed and Breakfast (SEZ2015-0006, RES 16-09)

Adjacent zoning and land uses:

North:	Bay Oaks Park, Fort Myers Beach Elementary School (Institutional)
South:	Estero Blvd, Multifamily, Office, and Resort (Residential Multifamily, CO, CR)
East:	School St. FMB Library, FMB United Methodist, (Institutional)
West:	Single-family residences, Bay Oaks Park (RC, Institutional)

II. BACKGROUND (Portions of this section are borrowed from FMB Staff Report for SEZ2016-0006 B&B):

The subject site is located at multiple addresses, 2661-2668 Estero, 125 School Street, and 131-151 School Street, at the intersection with Oak Street, School Street, and Estero Boulevard. The site is a combination of 12 lots platted as part of Winkler's subdivision in 1931 (Winkler's Subdivision, Block C, Lots 23-27 (2661-2668 Estero) Lot 28 (125 School Street) and Lots 29 – 34 (131-151 School Street). Each platted lot is approximately 25 feet in width and 150 feet in depth.

Based on information found on Lee County Property Assessor Field Cards, the six platted lots for 131-151 School Street appear to have been originally developed as three separate properties, each consisting of two of the platted lots, and each property having one structure. Property deeds show that the three individual properties came under common ownership by 1962 and have remained in common ownership since that time.

Prior Lee County zoning actions include Lee County Resolution Z-72-18 dated February 1, 1972 that granted a variance for an apartment under a duplex for personal home use on Lots 33 and 34. Additionally, ZVL2013-008 verified that the subject property consists of six plated lots.

Town records indicate that a rezoning to CPD was requested and denied by Town Council in 1996 (Res 96-31). The request was to build five multifamily dwelling units with commercial below. The original request was denied in February; while a revised and scaled down request was then denied in November 1996. The meeting minutes detail how the site was developed with multiple older structures that were in poor condition; while the applicant pointed out that the request did not include hotel uses and no access from School Street. The Town Council findings included the proposed commercial uses were not appropriate in the Boulevard Future Land Use Map category due to intrusion of a commercial use into a residential neighborhood.

The current property configuration resulted from the combination of three separate parcels in 2008 (STRAP #s 19-46-24-W3-0020C.0290, 19-46-24-W3-0020C.0310 and 19-46-24-W3-0020C.0330), and the addition of the remaining parcels comprising the the subject site, 2661-2668 Estero Blvd. and 125 School Street, in 2016 after the Town Council granted a special exception to allow a Bed and Breakfast use (only on the added parcels). According to the current Lee County Property Appraiser records, the 2661-2668

Estero Boulevard consists of two single-family dwelling units; and one single-family dwelling with an apartment.

The current application requests a rezoning from the RC zoning district to CPD. All CPD rezoning applications are required to have a master concept plan, which the applicant submitted, identifying proposed development and how development is consistent with the Town's Comprehensive Plan and Land Development Code.

The applicant has provided a narrative with the original application in Supplemental PH-D documents (see attached) explaining how it believes the proposed rezoning and master concept plan are consistent with the Comprehensive Plan, Land Development Code (including LDC Sec 34-85), and the Town's Design Guidelines. The original application requested 16 guest/hotel units developed over multiple phases. Since the original application, the applicant has responded to staff questions and review comments by submitting revised components of the request and the master concept plan. There have been two resubmittals containing modifications to the original application. The final submittal includes a request to allow 14 guest/hotel units over multiple phases; 600 sq. ft. of retail use, a restaurant, and rearranged building(s) to accommodate parking, stormwater, other site modifications, and a phasing plan.

In addition, the plan before the LPA includes an update to requested deviations (attachment 2). The applicant is requesting seven (7) deviations to various design and development criteria in the LDC. The deviations requested would allow the applicant to decrease landscape buffers, setbacks, and not comply with all design criteria, among others. Some of the deviations are to accommodate existing buildings with non-conforming setbacks, access location point separation, and parking space size.

Lots	Year Built	No. of Floors	No. of Dwelling Units	Sq. Footage of Unit
Lots 33 & 34	1969	Two stories	4 units	Base 812
				Apt 1 772
				Apt 2 784
				Apt 3 754
Lots 31 & 32	1957	Two stories	2 units	Base 768
				Apt 1 625
Lots 29 & 30	1958	One story	1 unit	504

Analysis:

Comprehensive Plan Consistency:

The subject property is located in Boulevard Future Land Use. The Boulevard category was developed to recognize existing commercial uses mixed amongst residential uses, but was also developed to protect neighborhoods from intrusion and expansion of commercial uses. "This category is not intended to allow commercial uses on all properties..." and goes on to describe what criteria the LPA must consider if an expansion of a commercial use is requested, as here.

*POLICY 4-B-5 "BOULEVARD": a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. **This category is not intended to allow commercial uses on all properties**; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). **To obtain approval for new or expanded commercial activities, proposals***

must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

The application does not address how the project will contribute to the “public realm” other than the applicant’s presentation at the LPA meeting that the commercial uses will provide a positive to the public realm. The Comprehensive Plan Policy (along with subsequent policies) share a theme related to pedestrian connectivity and design that encourages use of bicycle/pedestrian facilities rather than automobile.

Policy 4-B-5 (see bold above) requires that new or expanded commercial uses shall complement adjoining uses. The applicant’s LPA presentation included identifying the Town’s park, the school property, adjacent church, and library as non-residential uses that support their request for commercial. The application did not address how the proposed use, hotel/lodging and the requested consumption on premise, complements the public nature of the park, school, library, and church.

Policy 4-B-5 also establishes density criteria. The Town has interpreted this Policy in a manner that six dwelling units per acre can translate up to 12 hotel units per acre pursuant to the multiplier allowed by the Comprehensive Plan and LDC unless the property is within the Platted Overlay. The subject property is located within the Platted Overlay; and as referenced in 4-B-5 above, the maximum density permitted is ten units per acre for legally existing dwelling units. The applicant has submitted an analysis of this policy, along with portions of SEZ 2016-0006 (Bed & Breakfast approval) staff report that it argues supports the concept that ten units per acre is allowed when calculating the multiplier for the conversion to hotel and lodging units.

Previous staff presentations of this policy appear not to have included an analysis of Policy 4-B-11 Platted Overlay, which states:

PLATTED OVERLAY: This is not a separate category on the Future Land Use Map, but is applied in addition to one of the eight categories listed above. Allowable land uses are the same as in the underlying category, but the maximum residential density is 10 units per acre. This density level applies in the Pedestrian Commercial category only for affordable units consistent with the adopted redevelopment plan; in other categories it applies only to recognize existing dwelling units that were built legally but which would be non-conforming under a density cap of 6 units per acre.

As stated in the Platted Overlay policy, these two policies are to be applied together, not separately. The last sentence is to recognize the ten units per acre maximum to avoid creating a non-conforming density for existing residential units. Prior to the Bed and Breakfast, there was approximately 10 or 11 units within 1 acre of land, which explains why the Overlay was adopted.

The applicant’s argument is that SEZ 2015-0006 contemplated this question. The staff report for SEZ 2015-0006 never provided an analysis of Policy 4-B-11 in conjunction with Policy 4-B-5, as it should have. The potential impacts are a misapplication of Policy 4-B-5 when approving the Bed and Breakfast use that results in more hotel lodging units than intended. The applicant is seeking an interpretation, and ultimately a zoning change, that will result in the conversion of the existing residential units to a

Hotel/Lodging use – not a Bed & Breakfast use. Generally, the intent of a Bed & Breakfast is to maintain the character of the surrounding residential area with limited impacts.

Policy 4-C-2 states that “the maximum intensity of allowable commercial development in any category may be controlled by height restrictions or by other provisions of this plan and the Land Development Code.” Staff previously found that the proposed special exception to allow a Bed & Breakfast does not increase the density or intensity within the approved area footprint. The current application clearly requests an increased intensity of commercial activity through the addition of retail and restaurant uses, as well as the conversion of single-family residential, duplex, and Bed and Breakfast units to **hotel lodging uses**. The Town Council reached the same conclusion and findings when the previous property owner requested to add commercial uses to this site in 1996 through the CPD rezoning process. Simply stated, this application requests hotel/lodging use that further intensifies the commercial development. Half of the property is approved for a Bed and Breakfast, but the remaining .5 acres is residential, including property with a limit of weekly rentals.

*Policy 4-C-2 COMMERCIAL INTENSITY: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the **Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category.** The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5,*

Policy 4-C-3 contains provision for locational requirement for commercial uses. For the Boulevard Future Land Use designation, the Policy states that mixed use development including commercial uses are permitted but the use must be sensitive to nearby residential areas and contribute to the public realm.

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

- i. No rezonings for commercial uses shall be allowed in the “Low Density” category.*
- ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.*
- iii. In the “Mixed 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, and meet the design concepts of this plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process.*
- iv. In the “Boulevard” category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. **Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.***

- v. *The following principles shall be considered by the town when evaluating requests for new commercial uses:*
 - a. *Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion.*
 - b. *Shopping and services that **contribute to the pedestrian character** of the town are strongly preferred over buildings designed primarily for vehicular access.*
- vi. *The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by:*
 - a. *the type of commercial activities (such as traffic to be generated, hours of operation, and noise);*
 - b. *its physical scale (such as the height, and bulk of proposed buildings); and*
 - c. *the orientation of buildings and parking.*

Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.

The proposed CPD does not address commercial intrusion into the surrounding residential area or provide techniques that mitigate those impacts. Policy 4-C-3 directs new commercial uses to contribute to the “public realm” and to “pedestrian character.” The proposed master concept plan does not provide for either of these requirements. Furthermore, approval of the requested deviations will allow multiple access points along School Street, elimination of otherwise required sidewalks and pedestrian connectivity along the western portion of School Street, a reduction to the required landscaping buffers along the at the perimeter of the property, while also deviating from required buffer depths to accommodate non-conforming setbacks of existing buildings.

Planned Development Considerations:

The Land Development Code includes a list of items that the LPA/Town Council must consider, if applicable, when reviewing approval of a requested planned development. These criteria are contained in LDC Section 34-85 and are reproduced and discussed below.

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

Staff finds that there is no ambiguity which must be corrected, the site is zoned RC. The current uses include residential with a Bed and Breakfast approved via Special Exception. No correction is required.

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

Conditions have not changed that make approval of the request appropriate. The Comprehensive Plan policies, as addressed earlier, are still applicable. No changes to the character of the neighborhood have occurred.

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

Staff finds the requested amendment is inconsistent with the intent of chapter 34 of the LDC. The master concept plan and deviations provide no mitigation for commercial intrusion. The Comprehensive Plan Policies discussed earlier direct expanded and new commercial development to be consistent with the Land Development Code. Existing conditions and requested deviations prohibit compliance.

4. *The testimony of any applicant.*

The LPA and Council will be able to hear from the applicant at the public hearings.

5. *The recommendation of staff and of the local planning agency.*

The staff recommendation is for denial due to lack of compliance with the Comprehensive Plan and Land Development Code.

6. *The testimony of the public.*

The public will have the opportunity to testify at the LPA AND TOWN Council public hearings.

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.*

The request is not consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan. The intensification of commercial uses and intrusion into residential uses is contrary to the policies discussed earlier. Staff finds that the request is not consistent with Policy 4-B-5, 4-B-11, 4-C-2, and 4-C-3.

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

Staff finds the application is not consistent with Policy 4-C-3, including implementing the required performance standards identified within the Land Development Code.

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

Staff finds that urban services are available and adequate as the subject property is already served by potable water and sewer. Insufficient sidewalks exist to address an intensification of commercial uses and additional pedestrian traffic. Without improvements to pedestrian facilities, commercial development becomes auto-oriented. The roadway network currently serves an Elementary School and Town Park and vehicle travel directions are regularly modified to address peak traffic periods for the school.

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

The proposed master concept plan proposes development of parking and structures in locations of protected tree species. Environmental staff has identified at least two mature protected trees that will be negatively impacted.

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.*

The proposed uses are not compatible with the existing and planned uses. The Town Council made this finding for a similar request for commercial development in 1996. The application fails to identify how the proposed uses and proposed site plan are complementary to the adjacent uses, including the nearby school and Town park.

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.*

Commercial development within an area designated for school traffic can create challenges with timing and accessibility, partially due to the changes in traffic flow on a regular basis. The proposed

development includes maintaining and intensifying the use of driveways along School Street. Several of these driveways are intended to stack parking that will backout onto School Street. Typical school afternoon peak periods don't coincide with typical commercial development afternoon peak periods (4PM-6PM), but the Bay Oak Park peak periods do overlap with commercial development. Access from Estero Boulevard allows for primary accessibility away from School Street.

Additional consideration for planned development is specified in the Town's Land Development Code. LDC Section 34-216 specifies that "the recommendation made to the town council must be supported by the guidelines set forth in § 34-85" as well the findings must address whether the criteria found in this section can be addressed. These criteria are discussed below:

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

The proposed uses are not appropriate at the subject location based on the Town's Comprehensive Plan Policies previously discussed and incorporated herein. The location was also part of a previous application in 1996 commercial development subject to the same Goals, Objectives, and Policies as the current application. The intrusion of an expanded commercial use and the conversion of existing residential uses to hotel and lodging and/or commercial uses are not appropriate for this location that is a mix of residential and civic uses.

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

Staff finds that the proposed CPD, including the master concept plan, do not provide sufficient safeguards to the public interest. Items such as increased use and failure to improve unsafe access to School and Oak Street, lack of pedestrian facilities connecting a commercial development to adjacent facilities and uses, lack of landscaping and buffer mitigation efforts, and the various deviation requests to eliminate design requirements of the Land Development Code, individually and cumulatively, do not safeguard the public interest.

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

Staff finds that the request is inconsistent with the Comprehensive Plan and Land Development Code. The development conditions proposed by the applicant do not resolve those inconsistencies.

4. *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The request is not appropriately located, does not meet the criteria in the Comprehensive Plan, and does not contribute to the public realm, therefore, the request is not consistent with the Comprehensive Plan.

III. STAFF RECOMMENDATION:

Based on the criteria required for evaluation, staff finds the requested rezoning from RC to CPD with a master concept plan for hotel and lodging, retail, and restaurant with consumption of alcohol on premises, is not consistent with the Town's Comprehensive Plan and Land Development Code.

IV. LPA RECOMMENDATION:

The Fort Myers Beach Local Planning Agency recommended approval with conditions with a 6-0 vote on February 9, 2021. The draft meeting minutes are included in the Council's agenda packet. The LPA

recommended conditions included to establish limits for consumption on premise, noise abatement, and to obtain historical recognition for the cottage structures.

ORDINANCE 21-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE (“LDC”); PROVIDING FOR SCRIVENER’S ERRORS AND AN EFFECTIVE DATE.

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

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

WHEREAS, Myerside LLC, owner and applicant (“Applicant”), filed an application to rezone the property generally located at 131-151 School Street, 125 School Street, and 2661-2681 Estero Boulevard comprising 1 +/- acre of land (“Property”), from Residential Conservation (RC) to Commercial Planned Development (CPD) with a Master Concept Plan (MCP), a schedule of uses, and deviations to certain requirements of the Land Development Code (“LDC”), in order to develop a 14 unit hotel/resort with restaurant, retail, and consumption of alcohol on premises (“Application”); and

WHEREAS, the existing and proposed buildings on the Property (whether relocated or new) provide and are required to provide a design consistent with Fort Myers Beach historic-style cottages that retain the original character of Fort Myers Beach; and

WHEREAS, the Property is located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the Applicant as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on February 9, 2021, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6-0 to recommend approval of the rezoning and MCP with conditions, and

WHEREAS, on March 1, 2021 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the

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

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on April 5, 2021; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, including the consideration and findings in the staff report, 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 finds the proposed rezoning and MCP and requested deviations are **consistent/not consistent** with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code and voted to **approve/approve with conditions/deny** the Application.

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

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

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof that the requested rezoning **does/does not** meet the requirements of the Town Comprehensive Plan and LDC, and approving the rezoning of the Property from Residential Conservation (RC) zoning district to Commercial Planned Development (CPD) with a Master Concept Plan (MCP), a schedule of uses, and a deviation to certain requirements of the LDC **is/is not** in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/DENIES** the requested rezoning.

Section 3. In approving the rezoning of the Property, the following conditions of approval are imposed on the Applicant and the Property:

CONDITION 1. The development of the Project must be substantially consistent with Master Concept Plan (MCP) entitled Myerside CPD Resort and Cottages which is dated _____. The development must comply with all current requirements of the Fort Myers Beach Land Development Code (LDC) at the time of local development order approval except as may be granted by deviation or condition as part of this commercial land development and MCP. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

CONDITION 2. Prior to the commencement of Phase 1B Property Owner will combine the property into one Property Appraiser STRAP number.

CONDITION 3. Consumption on Premises.

Restaurant.

1. Public ingress/egress shall be limited to the restaurant entrance facing Estero Boulevard and shall include landscaping to be installed and maintained around the restaurant/outdoor dining area to outline service area.
2. Limited to 2COP.
3. Consumption of alcohol may be inside restaurant or on outdoor dining area. Hours of serving from 10:00 A.M. to 10:00 P.M. Payment for alcohol shall be made inside the restaurant only.
4. Amplified music shall be limited from 3:00 P.M. to 10:00 P.M. Monday through Friday and from 11:00 A.M. to 10:00 P.M. Saturday and Sunday.

CONDITION 4. Architectural design. Replacement or new construction of any building shall be subject to architectural review by a limited development order and shall be a design that is substantially consistent with and in conformance with the existing cottage design.

CONDITION 5. A perimeter landscape hedge shall be provided around the restaurant's outdoor seating area. The hedge must be planted in double staggered rows and be maintained so as to form a three-foot high continuous visual screen within one year after planting. Where the outdoor seating area abuts the perimeter buffer along the western Planned Development boundary, the buffer plantings will be supplemented to meet hedge requirements.

Section 4. The following limits apply to the Property and its development or redevelopment:

Schedule of Allowable Uses:

Residential:

Dwelling Units, Single or 2-Unit or Multi-Family

Residential Accessory Uses:

Accessory Apartment, Residential Accessory Use

Lodging:

Bed and Breakfast, Hotel/Motel, Guest Units

Rental of any permitted Unit per periods of one day or longer

Resort

Lodging Accessory Units:

On-Premises consumption of alcohol beverages (see MCP for limitations)

Resort Accessory Use

Personal Services

Recreational Facilities
Caretake Unit

Retail:
Subordinate Commercial Uses
Retail store, small
Restaurant

Property Development Regulations:

Principal Structures

Minimum Street Setback:	2.6 feet for existing Building #3; 10 feet for all other existing structures and new or relocated structures
Side Setbacks:	4.3 feet for existing structures; 7 feet for new or relocated structures
Rear Setback:	
Minimum Lot Area:	20,000 square feet
Minimum Lot Width:	100 feet
Minimum Lot Depth:	100 feet
Building Coverage:	
Maximum Stories:	
Maximum Height:	30 feet per LDC Section 34-631, Maximum 3 stories
Minimum Building Separation:	15 feet
Maximum Floor Area Ratio:	1.2

Accessory Structures:

Minimum Side Setbacks:	Same as principal structures, except for the accessory structure to Building 7, which will have a minimum setback of 3 feet; and the accessory garage for Building 4, which will have a +5.9' minimum setback
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Section 5. The Applicant has requested the following deviation, which the Town Council **does/does not** grant:

DEVIATION #1: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 15' side setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow $\pm 6.9'$ for Building 1, $\pm 4.3'$ for Building 7 and $\pm 7'$ for Building 8.

DEVIATION #2: A deviation from LDC Section 34-1174(2)(a) that requires accessory structure setbacks to be the same as principal structures or 15' to allow a

3' side setback for the accessory structure associated with Building 7 and $\pm$ 5.9' for the accessory garage associated with Building 4.

DEVIATION #3: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 10' street setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow a $\pm$ 2.6' for Building 3.

DEVIATION #4: A deviation from LDC Section 34-2015 (5), which requires that "all parking lots must be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion...", to allow exiting vehicles to leave parking spaces by backing onto School or Oak Streets only as depicted on MCP.

DEVIATION #5: A deviation from the driveway separation requirements of LDC Section 10-296 along Estero Boulevard to allow a driveway access to the subject property that is $\pm$ 77' from the closest access point (driveway) to the north and $\pm$ 77' to School Street.

DEVIATION #6: 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 6' Type C buffer as indicated on the Master Concept Plan limited to the west property line.

DEVIATION #7: A deviation from LDC Section 34-202(b)(5), which requires architectural elevations or a three-dimensional rendering, to approve the design of existing structures subject to Section 3 CONDITION 4 regarding the design of any new or relocated structures.

Section 6. Nothing in this rezoning, including any of the attached conditions, constitute a variance or deviation from the provisions of Chapter 6, Article IV "Floodplain Regulations" of the LDC. Approval of this rezoning does not exempt the subject property from any provisions of the LDC with the exception of any approved deviation contained herein.

Section 7. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance or statute, the most restrictive shall apply.

Section 8. 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 9. Any typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. This ordinance shall become effective upon adoption by the Town Council.

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

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member:	_____

ADOPTED this _____ day of _____, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this _____ day of _____, 2021.



Fort Myers Beach Local Planning Agency

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Tuesday, February 9, 2021

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members present: Chair Megan Heil, Forrest Critser, Dan Hughes, Jane Plummer, Scott Safford, Karen Swanbeck and Patrick Vanasse.

II. INVOCATION

LPA Member Swanbeck.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

A. Minutes from 1/12/2021 Meeting

LPA Member Critser moved to approve the minutes; second by LPA Member Safford.

Motion approved 7-0.

V. PUBLIC HEARINGS

A. VAR20200091 5730 Estero Blvd

Recommend approval of a variance from Land Development Code Chapter 34 Article IV Division 2 Sec. 34-1174(b) to allow the construction of two (2) accessory structures - a garage and pool - in front of the principal structure.

Town Attorney Herin, Jr. swore in those providing testimony. Ex parte communications: All LPA Members disclosed a site visit or drive by except LPA Members Vanasse and Swanbeck.

Joe McHarris from McHarris Planning and Design represented the Holcomb family. He utilized slides for his presentation, including Existing Conditions, Requested Action/Variance, Reason for Request, Proposed Site Plan and

Impact to Public Safety and Surrounding Properties. Mr. McHarris stated that they were not interested in attaching the garage to the house with a breezeway.

Assistant Community Development Director Carl Bengé reviewed the background of the request. He indicated that a breezeway would not require a variance. Director Green stated that the restroom above the garage was conditioned and could not be converted to a habitable space.

LPA Member Hughes noted he supported the request. He questioned the sanctions regarding the restricted covenant. Town Attorney Herin, Jr. replied that the extreme remedy would be to remove the violation.

Mr. McHarris described landscaping and a fence along the front of the property.

Public comment:

Bobbie Kemp, resident, stated that the owners did a fantastic job and encouraged the LPA to grant the request.

Public comment closed.

Amended Motion: LPA Member Hughes moved to recommend approval of Variance 2020-0091, having found that it met the findings and conclusions on pages 8 and 9 in the packet, subject to the conditions of approval 1-4 as set forth on page 10, to eliminate condition 4 and the fine be subject to the general penal provisions of the LDC; second by LPA Member Plummer.

LPA Member Plummer suggested that the \$500 per day fine be reduced to \$100 per day. Chair Heil stated that it was not their job to set penalties. Town Attorney Herin, Jr. stated that they could move to eliminate the language.

LPA Member Hughes amended his motion and LPA Member Plummer amended her second.

Motion approved 7-0.

B. DCI 2020-0009 Myerside CPD Rezoning

DCI 2020-0009 Myerside CPD Rezoning

Ex parte communications: LPA Member Vanasse submitted a conflict of interest form (Form 8B). The applicant retained him to represent them and he would recuse himself from deliberations and voting. LPA Member Swanbeck - drive-by; Chair Heil - site visit and met with the owner; LPA Member Plummer - communications from 2015 but nothing regarding the current request; LPA Member Safford - site visit and met with the owner; LPA Member Critser - site visit and met with the owner; LPA Member Hughes - met with the owner.

Beverly Grady with Roetzel and Andres and Patrick Vanasse with RWA Engineering represented the owners. Attorney Grady reviewed the history of the cottages on the property. She indicated that the Town recommended that the property be rezoned for a small resort at a scale that fit the Town. She commented they were well within density and noted that staff recommended denial.

Slides displayed included: Request, Location, Future Land Use Map,

Redevelopment Intent, 1996 Commercial Rezoning Denial on Half of Subject Property, 1996 Rezone to CPD: Irrelevant to this Application and Changes from the 1996 Case. Attorney Grady listed several documents to be filed with the Town Clerk.

Mr. Vanasse commented that he would discuss proposed uses and commercial intrusion, density and master concept plan details. He disagreed with the staff's findings and conclusions. Slides included: Zoning Map, Project Location, Consistency with Comprehensive Plan, Consistency with Comprehensive Plan: Boulevard FLU Category, Consistency with Comprehensive Plan; Allowance for Primarily Commercial Uses - 70%, Consistency with Comprehensive Plan: Platted Overlay, Comprehensive Plan - Density Equivalency, Allowable Density, Existing Units & Allowable Guest Units, Density Analysis, No Commercial Intrusion, Comp Plan Policies Further Supporting Commercial Uses and Preserving of Cottages, Planned Development District, Master Concept Plan Phases, Consistency with LDC Sec. 34-85 - Rezoning Considerations, Proposed MCP & Enhancement to Existing Conditions, Deviations, Proposed Bay Oaks Improvements, Coastal Cottage, FMB History and Lee County Context, Matlacha.

~Recess at 11:11 a.m.

Back in session at 11:21 a.m. ~

Director Green reviewed the primary request, including consumption on-premise. He described the property's intensification over the years and discussed the uses of a hotel versus a single-family. He stated that he could not locate a staff report regarding Blvd. Policies 4-B-5 and 4-B-11 together. He discussed non-conforming density for existing residential uses and pre-disaster build backs. He stated they had to establish the base density before they could evaluate how much more that was. He noted the structures were not designated as historic structures. Director Green commented that this was the first new commercial request in the area since the town was incorporated and it was an intensification of the existing uses. He discussed policy 4-C-3, subcategories 4 and 6 regarding the boulevard category. He indicated that the policy in the overlay did not mention that one could ask for up to 10 dwelling units per acre; it allowed for 10 dwellings per acre for existing residential uses. The conflict was preserving old architecture, new standards and new flood regulations. He stated that they did not present sufficient justification for commercialization and the request was not consistent with the Town's comp plan and LDC.

Chair Heil noted it was a complex issue and she wanted more guidance on why staff was denying the request. Director Green replied that there was a difference of opinion on the interpretation of the policy. Town Attorney Herin, Jr. remarked that the Town's LDC, comp plan and state law required rezoning requests to have two opposing views. He added that it was a threshold matter and if the LPA agreed with staff, it was the end of the discussion.

LPA Member Hughes revealed that he was involved with writing the language

in question and he felt what was proposed was immanently consistent with the comp plan and fell right within the language. He did not think the request was inconsistent with what they contemplated at the time.

LPA Member Safford questioned the increased traffic concern in a residential neighborhood since the Town just bought land between two houses. He suggested that Bay Oaks would generate more traffic than a little hotel.

Director Green agreed and stated they addressed the circulation, the turnover and conflicts with commercial driveways and School St. LPA Member Safford questioned whether the applicants were willing to have the cottages historically recognized. Beverly Milligan, owner, stated that their documents for historical consideration were ready to submit as soon as the Historic Preservation Board (HPB) became active again. LPA Member Safford questioned adding bike racks. Mr. Vanasse replied that they would add them. LPA Member Safford questioned whether the cottage they were trying to put on the property could be relocated. Mr. Vanasse responded that they chose that location to allow room for water management. LPA Member Safford questioned what could happen if they sold the property. Mr. Vanasse stated that new owners would have to abide by the master concept plan. If they wanted to amend it, they would have to follow the steps to apply for a rezoning amendment.

LPA Member Plummer stated that the four homes in the area were short-term vacation rentals and the whole neighborhood evolved into something else. The comp plan protected a residential area that no longer existed. Director Green agreed with the general concept, but they were stuck with the policy and regulations unless they changed them. He noted they could not change the future land use map and they tried to shoehorn development to fit into existing policies.

Chair Heil brought up the two Town-owned parking spots. Director Green commented that if they approved the request, they would work with Public Works to finalize the street design. Chair Heil requested clarification regarding the bolded policy on page 51. Director Green stated that it was open for interpretation.

LPA Member Critser questioned whether School St. was considered a street or a parking lot. Director Green replied that it was a street, but the Town treated it like a parking lot.

Chair Heil noted there were two different interpretations of density. Director Green replied that the overlay applied to existing residential uses. Mr. Vanasse stated they currently had 12 units, the maximum was 10 and they had the right to ask for 14. Director Green indicated the policy was to protect the individual residential unit. Town Attorney Herin, Jr. summarized that if they granted the rezoning request, the master plan would have to be approved and that would control the property. LPA Member Swanbeck questioned how they had the right to approve it and add conditions that could limit it. Town Attorney Herin, Jr. responded that it was their prerogative as the LPA to add conditions. Director Green clarified that the LPA and Town Council required a higher bar for projects that requested over a 2 multiplier.

Mr. Vanasse stated that the question was whether they were compatible or not. He noted the property did not back up against single-family homes. LPA Member Swanbeck described changes in the area since 1996.

No public comment.

LPA Member Hughes brought up the opportunity to preserve cottages. If approved, a commercial development plan would memorialize and protect them from future changes. He indicated he did not have a problem with the density.

LPA Member Swanbeck expressed concerns about new owners redeveloping the property and precluding it from happening up and down the island. She mentioned adding conditions to protect it.

LPA Member Critser discussed the importance of saving the cottages and keeping their heritage. He supported the rezoning request.

LPA Member Plummer stated that there was no public opposition concerning the request and the opportunity to preserve the historical cottages was important. She felt it was a benefit to the community and she liked the idea of a small resort with a restaurant. She suggested adding a condition that the owners move forward with the HPB documents. She indicated that consumption on-premises should be addressed. Town Attorney Herin, Jr. noted they could condition beverages subject to compliance with the Town's licensing requirements. Discussion was held regarding conditioning live entertainment, outdoor speakers and the restaurant. Director Green suggested a general condition regarding alcohol with options from the applicant before presenting to Town Council. He stated he would work with the applicants concerning language.

Chair Heil concluded that some of the Town's objections were thin and she felt it complied with the comp plan. She noted that the comp plan discussed saving cottages. LPA Member Swanbeck agreed that protecting the cottages was an important factor. She noted the community universally agreed during the original comp plan charettes.

Chair Heil moved to recommend approval of DCI 2020-0009 Myerside CPD Rezoning with conditions that meet criteria in the comp plan and LDC; a condition to bring forth ideas on alcohol consumption on-premise; a condition for noise abatement and to obtain a historical significance; second by LPA Member Plummer.

Motion approved 6-0 with Mr. Vanasse recused.

VI. ADMINISTRATIVE AGENDA

A. Comprehensive Plan Update Status

The Corradino Group will provide a project status of the Comprehensive Plan updates

James G. from The Corradino Group spoke via phone concerning his

experience. PowerPoint was utilized for their presentation. Slides included: Project Tasks and Timeline, Preliminary Review, Are There Additional Areas We Should Focus On and Online Survey. Director Green questioned the vision for the community and whether it needed to be updated. Chair Heil questioned why hospitals and long term care facilities were included. Director Green replied that they had to evaluate and address them under state law.

Director Green noted an online survey was available for public input. LPA Member Vanasse cautioned that they needed to take the time to get it done and be careful about creating unfunded mandates. Director Green replied that the schedule was aggressive to encourage the public to participate, but they would slow down if needed to address critical issues. Chair Heil was concerned that the public input would occur in the summer when fewer people were in Town. Director Green mentioned the online format and agreed that the timing was tricky.

LPA Member Plummer questioned the alternative water source. Director Green replied that the state developed a list of criteria that all communities had to evaluate.

Director Green explained that Vision Zero was a state regulation concerning eliminating bike and pedestrian deaths.

LPA Member Hughes questioned whether the scope encompassed portions of the Land Development Code (LDC). Director Green indicated that a lot of reorganization needed to be done and some items in the Comprehensive Plan (Comp Plan) would be moved to the LDC and vice versa.

VII. LPA MEMBERS ITEMS/REPORTS

LPA Member Plummer suggested that every person evaluate their home security and smoke detectors.

Chair Heil volunteered to attend the March 1, 2021, Town Council meeting. She questioned whether the code enforcement system was set up to report code violations anonymously. Community Services Administrator Daphnie Saunders explained the process and stated that people could anonymously call in a complaint. She noted they operated under a complaint-driven system and wanted to work with people to bring them into compliance.

No items from other members.

VIII. LPA ATTORNEY ITEMS/REPORTS

No items.

IX. COMMUNITY DEVELOPMENT ITEMS/REPORTS

No items.

X. ITEMS FOR NEXT MONTHS AGENDA

No items.

XI. PUBLIC COMMENT

No public comment.

XII. ADJOURNMENT

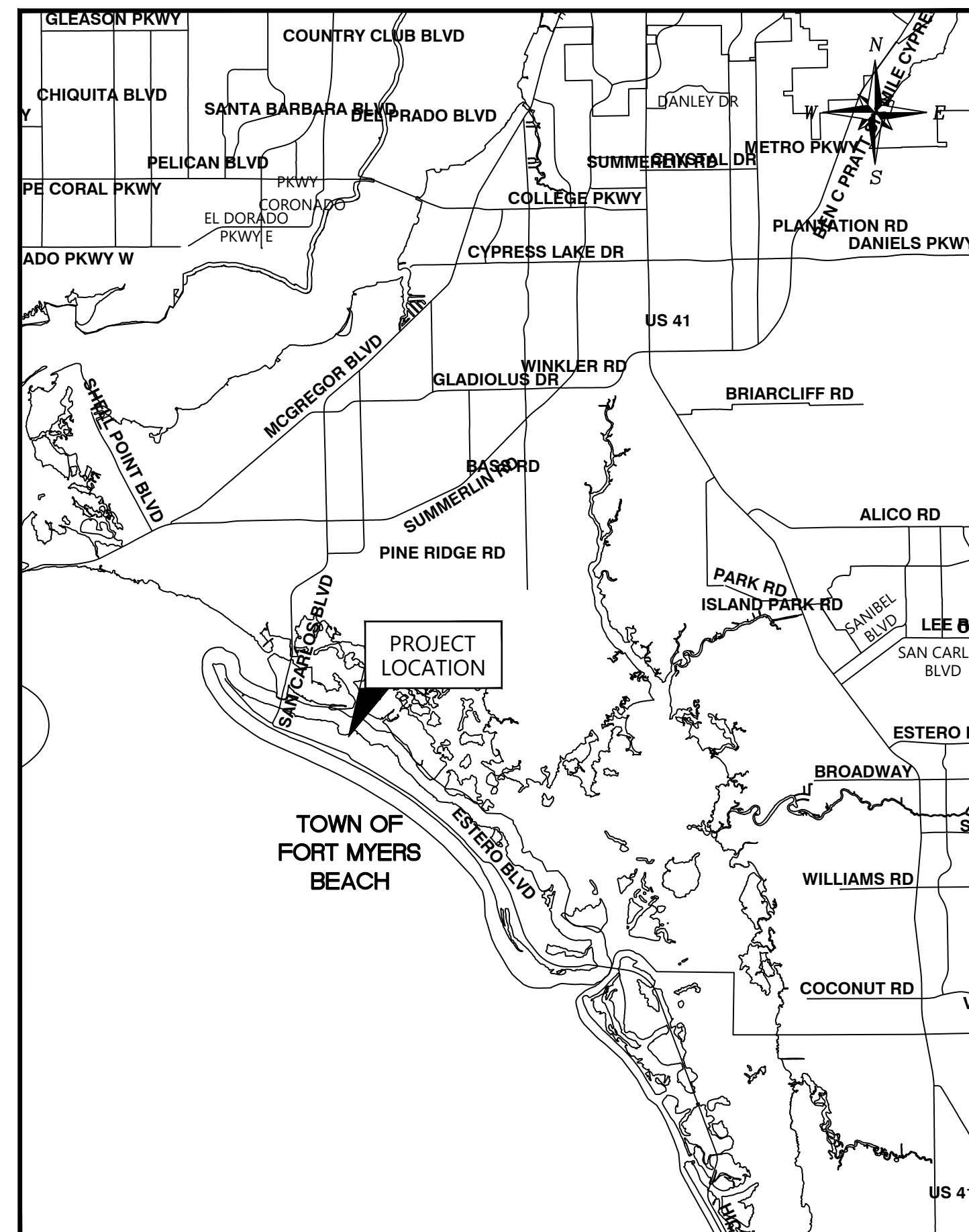
LPA Member Safford moved to adjourn; second by LPA Member Plummer.

Motion approved 7-0.

Meeting was adjourned at 1:07 p.m.

MASTER CONCEPT PLAN FOR MYERSIDE RESORT AND COTTAGES COMMERCIAL PLANNED DEVELOPMENT

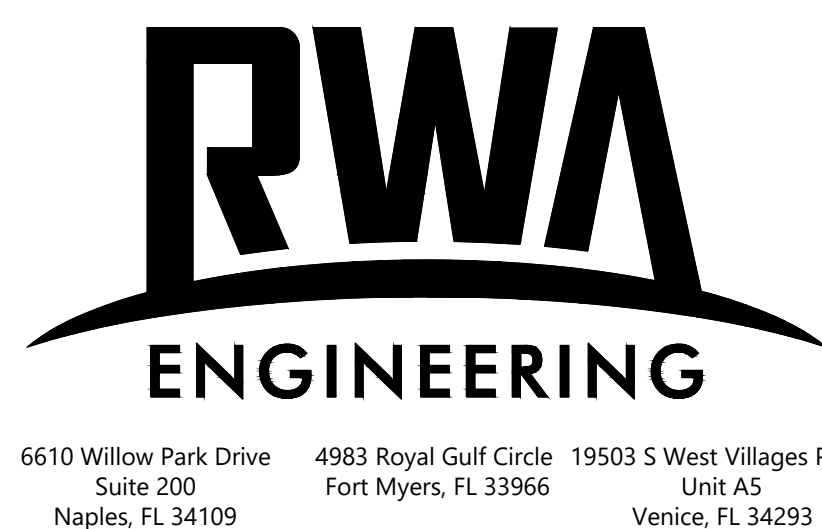
TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46S, RANGE 24E,
LEE COUNTY, FLORIDA



VICINITY MAP
N.T.S.



SITE LOCATION MAP



Office: (239) 597-0575
Fax: (239) 597-0578
www.consult-rwa.com

Florida Certificates of Authorization
EB 7663 LB 6952

PREPARED FOR/OWNED BY:
MYERSIDE, LLC.
145 SCHOOL ST.
FORT MYERS BEACH, FL 33931

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN-EXISTING CONDITIONS	
3	MASTER CONCEPT PLAN - PHASE 1	
4	MASTER CONCEPT PLAN - PHASE 2	
DATE:	PROJECT No.:	SHEET No.:
JUNE 12, 2020	200022.00.00	1 OF 4

SCHEDULE OF USES

RESIDENTIAL:
DWELLING UNITS, SINGLE OR 2-UNIT OR MULTI-FAMILY

RESIDENTIAL ACCESSORY USES:
ACCESSORY APARTMENT, RESIDENTIAL ACCESSORY USE

LODGING:
BED AND BREAKFAST, HOTEL/MOTEL, GUEST UNITS,
RENTAL OF ANY PERMITTED UNIT PER PERIODS OF ONE
DAY OR LONGER,
RESORT

LODGING ACCESSORY UNITS:
ON-PREMISES CONSUMPTION OF ALCOHOLIC
BEVERAGES (LIMITED TO RESTAURANT AND TIKI HUT, 3)
RESORT ACCESSORY USE, PERSONAL SERVICES,
RECREATIONAL FACILITIES, CARETAKER UNIT

RETAIL:
SUBORDINATE COMMERCIAL USES, RETAIL STORE,
SMALL RESTAURANT: HOURS OF SERVICE FOR OUTDOOR
SEATING LIMITED TO 10AM - 10PM 3

SITE DEVELOPMENT REGULATIONS

PRINCIPAL STRUCTURES
MINIMUM STREET SETBACK: 2.6 FEET FOR EXISTING BUILDING #3; 10 FEET FOR ALL OTHER EXISTING STRUCTURES AND
NEW OR RELOCATED STRUCTURES
MINIMUM SIDE SETBACK: 4.3 FEET FOR EXISTING STRUCTURES; 7 FEET FOR NEW OR RELOCATED STRUCTURES
MAXIMUM HEIGHT: 30 FEET PER LDC SECTION 34-631, MAXIMUM 3 STORIES
MINIMUM LOT SIZE: 20,000 SQUARE FEET
MINIMUM LOT WIDTH: 100 FEET
MINIMUM LOT DEPTH: 100 FEET
MINIMUM BUILDING SEPARATION: 15 FEET
MAXIMUM FLOOR AREA RATIO: 1.2

ACCESSORY STRUCTURES
MINIMUM SIDE SETBACK: SAME AS PRINCIPAL STRUCTURES, EXCEPT FOR THE ACCESSORY STRUCTURE TO BUILDING 7, WHICH
WILL HAVE A MINIMUM SETBACK OF 3 FEET; AND THE ACCESSORY GARAGE FOR BUILDING 4, WHICH
WILL HAVE A ± 5.9' MINIMUM SETBACK.

ALL OTHER DEVELOPMENT STANDARDS SHALL BE AS SET FORTH IN LDC CHAPTER 34 OR OTHER APPLICABLE PROVISIONS IN THE LDC.

GENERAL NOTES

- 1) THIS PROJECT WILL BE DEVELOPED IN 2 PHASES.
2) THIS MASTER CONCEPT PLAN IS FOR PLANNING PURPOSES ONLY. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE
STRUCTURES AND OTHER IMPROVEMENTS MAY VARY SLIGHTLY. FINAL DESIGN AND IMPROVEMENT DETAILS SHALL BE PROVIDED AS
PART OF THE DEVELOPMENT ORDER (DO) PROCESS.
3) THIS PLANNED DEVELOPMENT IS A REDEVELOPMENT PROJECT, WHICH INCLUDES EXISTING SITE IMPROVEMENTS AND STRUCTURES AS
WELL AS PLANNED IMPROVEMENTS. THE INTENT OF THIS MCP IS TO REALISTICALLY DEPICT THOSE CONDITIONS AND REGULATE
ALLOWED USES; HOWEVER, IT SHOULD NOT RESTRICT THE ABILITY TO MAKE OTHER SITE IMPROVEMENTS IF THOSE ARE CONSISTENT
WITH THE GENERAL CONCEPT DEPICTED ON THE MCP AND IN COMPLIANCE WITH APPLICABLE LDC PROVISIONS.
4)PER LDC SECTION 34-2015(4) STACKING OF PARKING SPACES IS ALLOWED WHEN ASSOCIATED WITH A DRIVEWAY, CARPORT OR
UNDER-BUILDING PARKING.
5)PER LDC SECTION 34-2017, THE PARKING ASSOCIATED WITH THIS PROJECT IS CONSIDERED “LOW TURNOVER” AND THEREFORE
ALLOWS ALTERNATIVE UNPAVED SURFACES AS OUTLINED IN THE LDC.
6) PER LDC SECTION 34-1987(A), NO OFF-STREET LOADING AREA IS REQUIRED FOR THIS PROJECT.
7) AMPLIFIED SOUND ASSOCIATED WITH OUTDOOR RESTAURANT SEATING LIMITED TO 10AM - 10PM. 3

BUILDING DETAILS

- 1 ONE STORY, ONE UNIT, +/-700 SF
2 TWO STORIES, TWO UNITS, +/- 950 SF
3 ONE STORY, ONE UNIT, +/- 700 SF
4 PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
5 TWO STORIES , TWO UNITS, +/- 1,393 SF
AND RESORT OFFICE, 269 SF
6 TWO STORIES, FOUR UNITS, +/- 3,122 SF
7 ONE STORY, ONE UNIT, +/- 504 SF

PARKING

REQUIRED SPACES: 32
PROVIDED SPACES: 34 (PHASE 1)
36 (PHASE 2)

X - EXISTING PARKING SPACES



0102040

DATE

02/09/2021

HD

HD

PV

DRAWN

PER REVIEWED

DATE

02/09/2021

3

2

1

4

RWA

ENGINEERING

WWW.CONSL

Office: 239.516.6100

Florida Professional Seal

MYERSIDE, LLC.

MYERSIDE RESC COMMERCIA

MASTER

CLIENT:

PROJECT:

TITLE:

DATE:

DESIGNED:

PV

SRC:

TWP:

RES:

DRAWN:

DLP

PROJECT NO.:

200022.00.00

SHEET NUMBER:

2

OF

4

DENSITY

12 GUEST UNITS / 6.5 EQUIVALENCY UNITS

BUILDING DETAILS

- 1 ONE STORY, RESTAURANT, +/-700 SF
- 2 TWO STORIES, TWO UNITS, +/- 950 SF
- 3 ONE STORY, RETAIL, +/- 700 SF
- 4 PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
- 5 TWO STORIES , TWO UNITS, +/- 1,393 SF AND RESORT OFFICE, 269 SF
- 6 TWO STORIES, FOUR UNITS, +/- 3,122 SF
- 7 ONE STORY, ONE UNIT, +/- 504 SF

PHASING

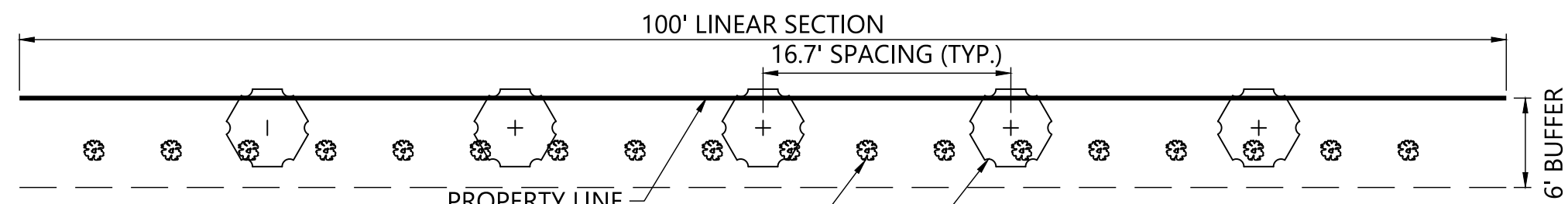
- PHASE 1
- SUBPHASE A: MOVE BUILDING 2
 - SUBPHASE B: BUILD CENTRALIZED PARKING AREA (GRAVEL + WHEEL STOPS WITH CONTROLLED POINTS OF INGRESS/EGRESS
 - SUBPHASE C: CONVERT BUILDING 3 TO RETAIL USE
 - SUBPHASE D: CONVERT BUILDING 1 TO A RESTAURANT AND ADD OUTDOOR SEATING

NOTES

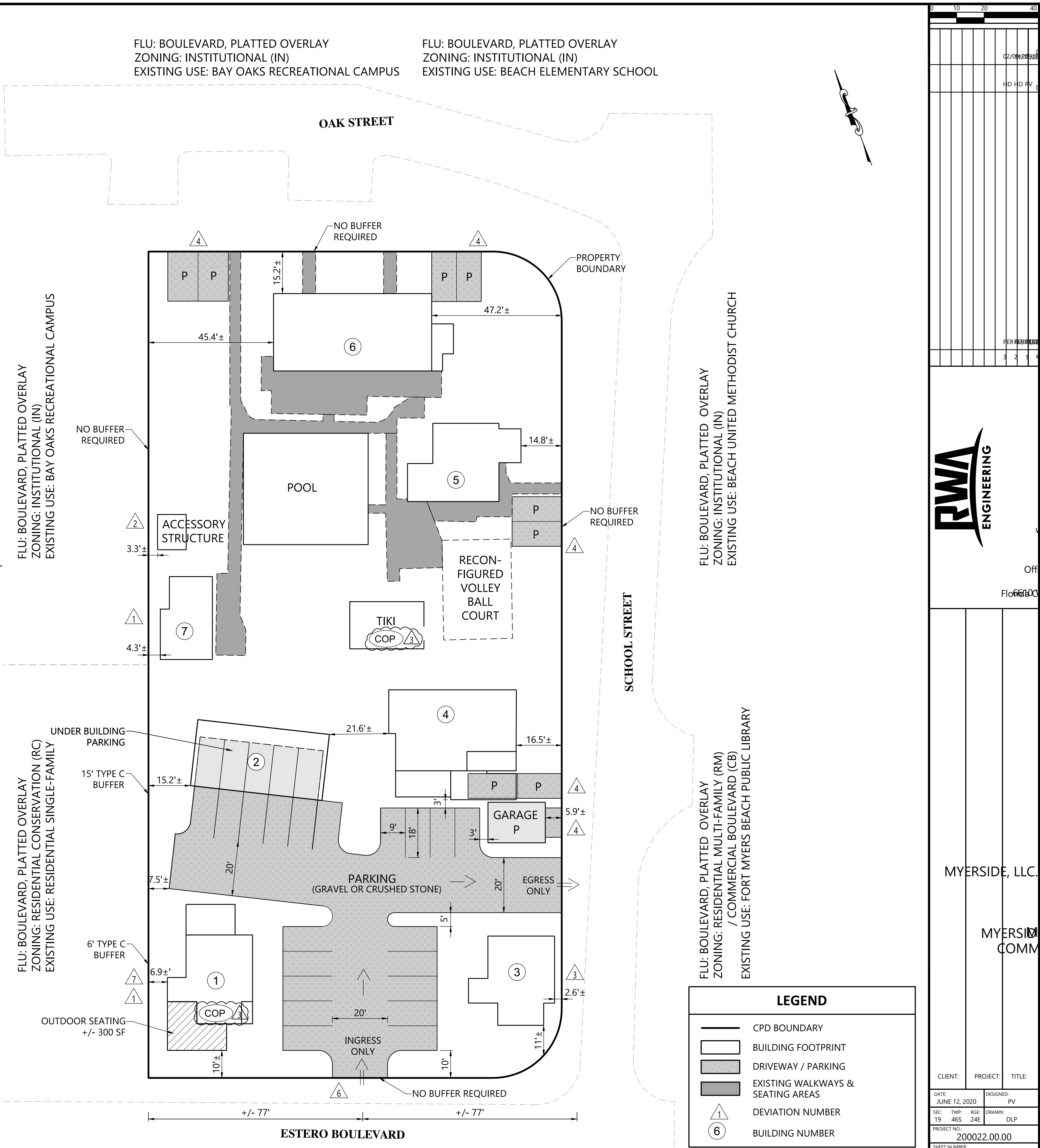
- ALL STRUCTURES IDENTIFIED ON THIS SHEET (PHASE 1) ARE EXISTING STRUCTURES. ALL STRUCTURES TO REMAIN IN EXISTING LOCATIONS EXCEPT BUILDING 2, WHICH WILL BE RELOCATED FROM ITS CURRENT LOCATION (SEE SHEET 1) TO THE LOCATION IDENTIFIED ON THIS SHEET.
- INDIVIDUAL PARKING SPACES AND PARKING AREAS WILL MEET LDC DIVISION 26 REQUIREMENTS EXCEPT FOR SPACES SUBJECT TO DEVIATION 4 AS IDENTIFIED ON THE MCP.
- ALL PRINCIPAL STRUCTURES MEET OR EXCEED THE 15' MINIMUM SEPARATION REQUIREMENT.
- WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT TIME OF D.O.
- THIS CPD WILL PROVIDE OPEN SPACE IN ACCORDANCE WITH LDC SECTION 10-415 AND AS MODIFIED BY DIVISION #7.
- EXISTING STRUCTURES ARE DEEMED NON-CONFORMING BUILDINGS IN ACCORDANCE WITH LDC -SECTION 34-3202, POTENTIAL FUTURE IMPROVEMENTS TO THOSE BUILDINGS WILL COMPLY WITH DIVISION 2 OF THE LDC.

SCHEDULE OF DEVIATIONS

- DEVIATION #1:** A DEVIATION FROM LDC TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICT THAT REQUIRES 15' SIDE SETBACKS FOR THE CR ZONING DISTRICT (*PER LDC SEC 34-953 BUILDING PLACEMENT, SIZE, DESIGN, AND ALL OTHER PROPERTY DEVELOPMENT REGULATIONS IN A CPD ZONING DISTRICT SHALL BE THE SAME AS FOR THE CR ZONING DISTRICT FOR CPDS THAT ARE PRIMARILY LODGING...*) TO ALLOW A ±6.9' FOR BUILDING 1, ±4.3' FOR BUILDING 7 AND ±7' FOR BUILDING 8.
- DEVIATION #2:** A DEVIATION FROM LDC SECTION 34-1174(2)(A) THAT REQUIRES ACCESSORY STRUCTURE SETBACKS TO BE THE SAME AS PRINCIPAL STRUCTURES OR 15' TO ALLOW A 3' SIDE SETBACK FOR THE ACCESSORY STRUCTURE ASSOCIATED WITH BUILDING 7, AND +/- 5.9' FOR THE ACCESSORY GARAGE ASSOCIATED WITH BUILDING 4.
- DEVIATION #3:** A DEVIATION FROM LDC TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICT THAT REQUIRES 10' STREET SETBACKS FOR THE CR ZONING DISTRICT (*PER LDC SEC 34-953 BUILDING PLACEMENT, SIZE, DESIGN, AND ALL OTHER PROPERTY DEVELOPMENT REGULATIONS IN A CPD ZONING DISTRICT SHALL BE THE SAME AS FOR THE CR ZONING DISTRICT FOR CPDS THAT ARE PRIMARILY LODGING...*) TO ALLOW A ±2.6' SETBACK FOR BUILDING 3.
- DEVIATION #4:** A DEVIATION FROM LDC SECTION 34-2015 (5), WHICH REQUIRES THAT “ALL PARKING LOTS MUST BE PROVIDED WITH SUFFICIENT MANEUVERING ROOM SO AS TO ALLOW AN EXITING VEHICLE TO LEAVE THE PARKING LOT IN A FORWARD MOTION...”, TO ALLOW EXITING VEHICLES TO LEAVE PARKING SPACES BY BACKING ONTO SCHOOL OR OAK STREETS.
- DEVIATION #5:** A DEVIATION FROM THE DRIVEWAY SEPARATION REQUIREMENTS OF LDC SECTION 10-296 ALONG ESTERO BOULEVARD TO ALLOW A DRIVEWAY ACCESS TO THE SUBJECT PROPERTY THAT IS ±77' FROM THE CLOSES ACCESS POINT TO THE NORTH AND ±77 TO SCHOOL STREET.
- DEVIATION #6:** 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 6' TYPE C BUFFER AS INDICATED ON THE MASTER CONCEPT PLAN.
- DEVIATION #7:** A DEVIATION FROM LDC SECTION 34-202(b)(5), WHICH REQUIRED ARCHITECTURAL ELEVATIONS OR A THREE-DIMENSIONAL RENDERING, TO INSTEAD ALLOW PICTURES OF THE EXISTING STRUCTURES.



DEVIATION #7 BUFFER SECTION



DENSITY

14 GUEST UNITS / 7.3 EQUIVALENCY UNITS

BUILDING DETAILS

- 1 ONE STORY, RESTAURANT, +/-700 SF
- 2 TWO STORIES, TWO UNITS, +/- 950 SF
- 3 ONE STORY, RETAIL, +/- 700 SF
- 4 PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
- 5 TWO STORIES , TWO UNITS, +/- 1,393 SF AND RESORT OFFICE, 269 SF
- 6 TWO STORIES, FOUR UNITS, +/- 3,122 SF
- 7 ONE STORY, ONE UNIT, +/- 504 SF
- 8 TWO STORIES, FOUR UNITS,+/- 1,600 SF

PHASING

- PHASE 2
- ADD BUILDING 8. MAY BE NEW CONSTRUCTION OR EXISTING ISLAND COTTAGE MOVED TO THE SITE.

NOTES

- ALL STRUCTURES EXCEPT BUILDING 8 ARE EXISTING BUILDINGS.
- INDIVIDUAL PARKING SPACES AND PARKING AREAS WILL MEET LDC DIVISION 26 REQUIREMENTS EXCEPT FOR SPACES SUBJECT TO DEVIATION 4 AS IDENTIFIED ON THE MAP.
- ALL PRINCIPAL STRUCTURES MEET OR EXCEED 15' MINIMUM SEPARATION REQUIREMENT.
- WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGN AT TIME OF D.O.
- EXISTING STRUCTURES ARE DEEMED NON-CONFORMING BUILDINGS IN ACCORDANCE WITH LDC -SECTION 34-3202, POTENTIAL FUTURE IMPROVEMENTS TO THOSE BUILDINGS WILL COMPLY WITH DIVISION 2 OF THE LDC.

SCHEDULE OF DEVIATIONS

DEVIATION #1: A DEVIATION FROM LDC TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICT THAT REQUIRES 15' SIDE SETBACKS FOR THE CR ZONING DISTRICT (PER LDC SEC 34-953 BUILDING PLACEMENT, SIZE, DESIGN, AND ALL OTHER PROPERTY DEVELOPMENT REGULATIONS IN A CPD ZONING DISTRICT SHALL BE THE SAME AS FOR THE CR ZONING DISTRICT FOR CPDS THAT ARE PRIMARILY LODGING...) TO ALLOW A ±6.9' FOR BUILDING 1, ±4.3' FOR BUILDING 7 AND ±7' FOR BUILDING 8.

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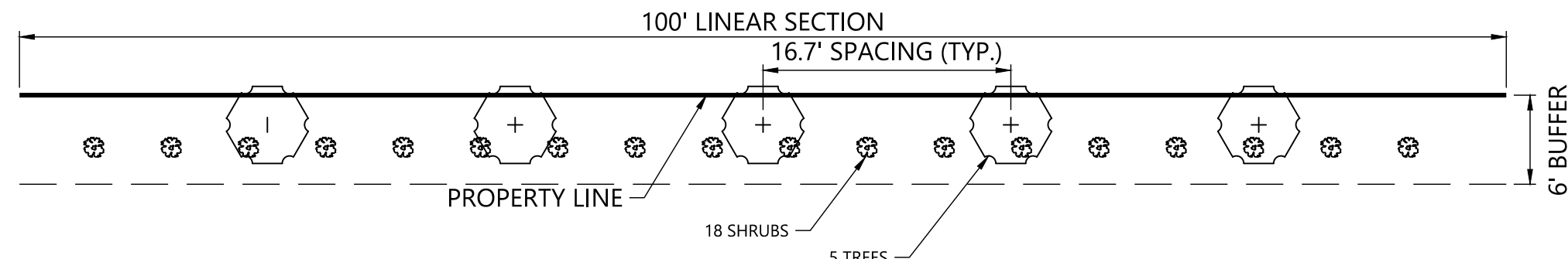
DEVIATION #3: A DEVIATION FROM LDC TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICT THAT REQUIRES 10' STREET SETBACKS FOR THE CR ZONING DISTRICT (PER LDC SEC 34-953 BUILDING PLACEMENT, SIZE, DESIGN, AND ALL OTHER PROPERTY DEVELOPMENT REGULATIONS IN A CPD ZONING DISTRICT SHALL BE THE SAME AS FOR THE CR ZONING DISTRICT FOR CPDS THAT ARE PRIMARILY LODGING...) TO ALLOW A ±2.6' SETBACK FOR BUILDING 3.

DEVIATION #4: A DEVIATION FROM LDC SECTION 34-2015 (5), WHICH REQUIRES THAT “ALL PARKING LOTS MUST BE PROVIDED WITH SUFFICIENT MANEUVERING ROOM SO AS TO ALLOW AN EXITING VEHICLE TO LEAVE THE PARKING LOT IN A FORWARD MOTION...”, TO ALLOW EXITING VEHICLES TO LEAVE PARKING SPACES BY BACKING ONTO SCHOOL OR OAK STREETS.

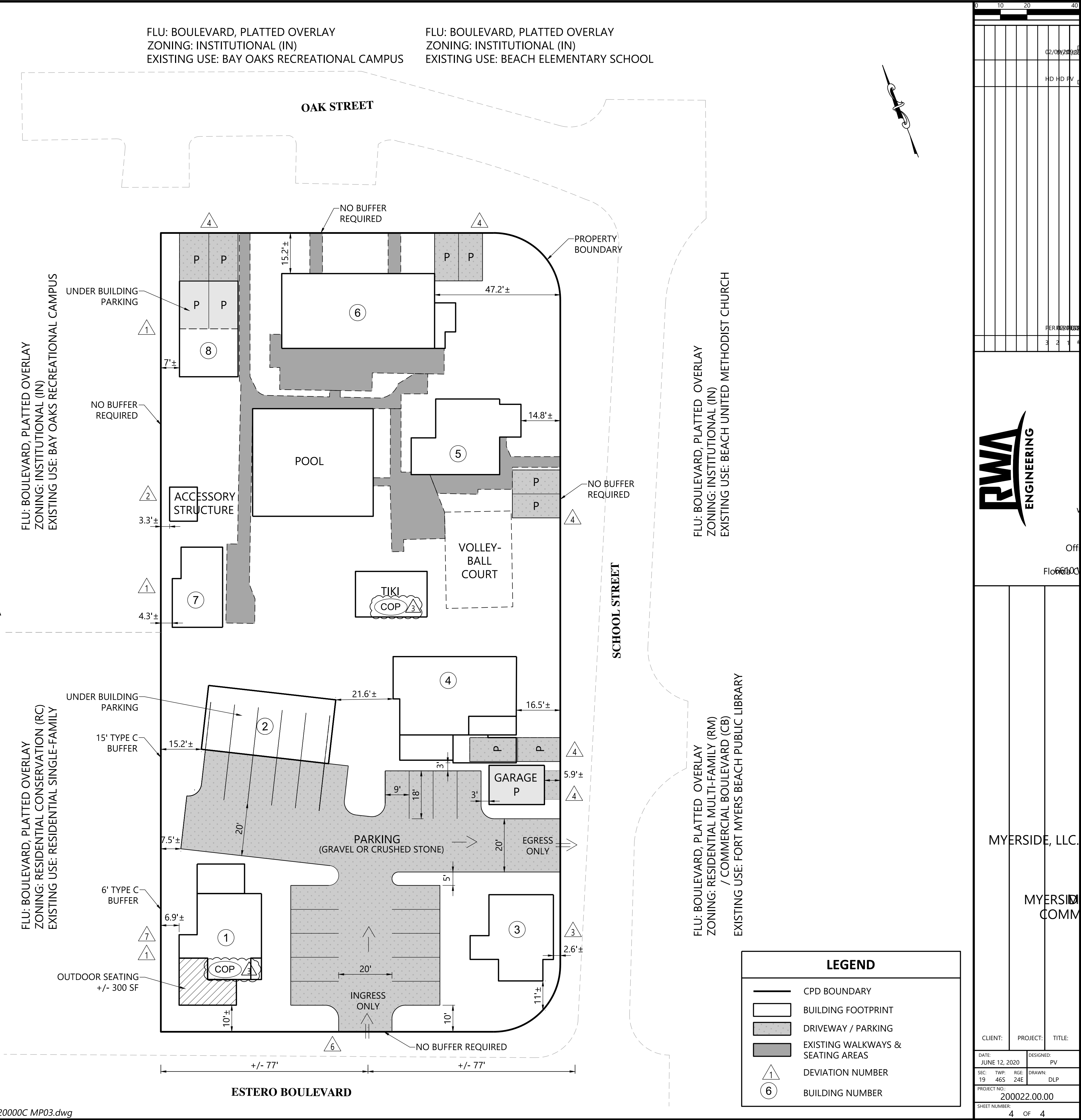
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DEVIATION #7 BUFFER SECTION



DATE

02/09/2020

DATE

02/09/2020

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PER

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DATE

BY

APP

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RWA

ENGINEERING

www.cons

Office: 239.5

Flo 66100

Williwa Ba

MYERSIDE, LLC.

MYERSIDE

COMMERCIA

CLIENT:

PROJECT:

TITLE:

DATE:

JUNE 12, 2020

DESIGNED:

PV

SIC:

TWP:

RES:

24E

DRAWN:

DLP

PROJECT NO.:

200022.00.00

SHEET NUMBER:

4 OF 4



Myerside Resort and Cottages Planned Development Schedule of Deviations and Justifications

The Myerside Resort and Cottages CPD is a redevelopment project aimed at conserving historical beach cottages and improving the subject property to create an attractive and functional boutique resort that offers lodging, recreational amenities, and small accessory restaurant and retail components that will serve resort and the general public. The existing structures on site date back to the 1930's. Since then development regulations have changed significantly, making those existing building non-conforming. The CPD zoning option provides design flexibility to allow innovative projects and planning practices through the use of deviations and site-specific development standards. Through the CPD and the deviations below, nonconformities can be addressed, conditioned and legitimized. The deviations requested are needed because of existing historical conditions – i.e. building placement and site configuration. It should be noted that most of the buildings and site improvements have been in place for decades and have had no detrimental impact on adjacent properties. The proposed CPD is consistent with the Town's comprehensive plan and furthers the intent of the Boulevard future land use district. As stated in Policy 4-B-5, the Boulevard district allows, and promotes the conservation of historic cottages and the mixed-use nature of this area.

DEVIATION #1: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 15' side setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow $\pm 6.9'$ for Building 1, $\pm 4.3'$ for Building 7 and $\pm 7'$ for Building 8.

JUSTIFICATION: Since this is an existing condition and the structures have been in these locations for decades, it is appropriate to grant relief from the side setback requirement for buildings 1, 7 and 8. The resort concept proposed is a continuance of the Fort Myers Beach early village design. It is important to recognize that the CPD proposes a village concept that is an improvement to this neighborhood and that a reduced setback is needed for this proposed village design. The proposed deviation simply legitimizes and allows the continuation of existing conditions that have had no detrimental impacts on adjacent properties.

DEVIATION #2: A deviation from LDC Section 34-1174(2)(a) that requires accessory structure setbacks to be the same as principal structures or 15' to allow a 3' side setback for the accessory structure associated with Building 7 and $\pm 5.9'$ for the accessory garage associated with Building 4.

JUSTIFICATION: Since these are existing conditions and the structures have been in these locations for decades, it is appropriate to grant relief from the side setback requirement for the accessory shed associated with Building 7 and the accessory garage associated with Building 4. The proposed deviation simply legitimizes and allows the continuation of existing conditions that have no detrimental impact on adjacent properties. The

shed abuts the public parking lot of the Bay Oaks pool facility and will continue to have no impact to public health, safety and welfare. Likewise, the accessory garage has no impact on public health, safety and welfare.

DEVIATION #3: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 10' street setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow a $\pm 2.6'$ for Building 3.

JUSTIFICATION: Since this is an existing condition and the structure has been in this location for decades, it is appropriate to grant relief from the street setback requirement for Buildings 3. Building 3 is an integral part of the village resort concept proposed for this property. It has been in its current location for decades, it has no detrimental impact to adjacent properties and does not affect public health, safety and welfare. The proposed deviation legitimizes and allows the continuation of this existing condition.

DEVIATION #4: A deviation from LDC Section 34-2015 (5), which requires that "all parking lots must be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion...", to allow exiting vehicles to leave parking spaces by backing onto School or Oak Streets.

JUSTIFICATION: This deviation is requested to allow the continuation of existing conditions and to accomplish the village concept in which the existing parking is located on the periphery of the property and the recreational and open space areas are located at the center of the village complex. The proposed MCP and associated parking plan allows for some existing parking spaces to maintain their "back out" configuration along Oak Street and School Street. These parking spaces account for a small amount of the overall spaces and are in proximity and accessory to existing buildings. Moreover, Oak and School Streets are local roads with very low traffic volumes and low travel speeds. The existing back out spaces have not created unsafe conditions in the past nor will they do so in the future. The parking arrangement supports the village design and ease of access and convenience for patrons of the resort. Along Estero Boulevard where buildings 1 and 3 will be converted into ancillary restaurant and retail space, the parking has been centralized and formalized to improve access, circulation and general safety conditions by reducing access points, and eliminating back up parking spaces onto Estero Boulevard. The proposed improvement, in combination with the proposed deviation, will allow a much-improved parking plan, while allowing the village resort look and feel to be maintained.

DEVIATION #5: A deviation from the driveway separation requirements of LDC Section 10-296 along Estero Boulevard to allow a driveway access to the subject property that is $\pm 77'$ from the closest access point (driveway) to the north and $\pm 77'$ to School Street.

JUSTIFICATION: This is a request for a deviation from driveway access separation along Estero Boulevard. Currently, there are two driveway accesses from Estero Boulevard to the subject property. The two access points are being reduced to one access point. Phase 1 relocates Building 2 and creates one access point to a parking lot that will service the proposed accessory restaurant (Building 1) and retail (Building 3), as well as the guest units. This new configuration eliminates existing "back up" parking along Estero and limits the Estero access point to "ingress only" and the School access point to "egress only." This configuration will improve

circulation patterns and safety conditions. The proposed access point on Estero is located $\pm 77'$ from the nearest driveway to the north and $\pm 77'$ from School Street to the south.

DEVIATION #6: 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 6' Types C buffer as indicated on the Master Concept Plan.

JUSTIFICATION: This deviation is requested in conjunction with deviation #1 and provides relief to the buffer separation requirement due to existing site conditions. Building 1 is located approximately 6.9' from the adjacent property line where code requires a 15' Type C buffer. Along the length of Building 1, this deviation will allow the required Type C plantings and fence to be located within a 6' strip rather than a 15' strip. The proposed buffer will provide the required Type C plantings and fence but the buffer width will be reduced to accommodate Building 1 that has been in this location for decades. This deviation meets the intent of the buffer requirement, while not having any detrimental impact on the adjacent property and public health, safety and welfare.

DEVIATION #7: A deviation from LDC Section 34-202(b)(5), which requires architectural elevations or a three-dimensional rendering, to instead allow pictures of the existing structures.

JUSTIFICATION: This deviation is requested in recognition that the proposed resort represents a redevelopment project where 7 of the 8 proposed buildings are already on the site and that the 8th building will either be a relocated beach cottage or new structure that will have to undergo appropriate permitting. This application preserves and promotes the historic bungalow cottage architecture that was prevalent on this island 60 years ago. We submit that the attached photographs be included as part of a condition of approval requiring that the cottages maintain their current architectural vernacular. The photographs provide a true and accurate depiction of this architecture. They constitute an appropriate substitute to architectural elevations since this requirement typically applies to new construction where architectural drawings are readily available. We would agree to a condition that would require Building #8 to be harmonious and consistent with the architectural style preserved in the attached photographs.



November 17, 2020

Mr. Jason Green
Planner, Community Development
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida, 33931

Subject: DCI #20200009
Myerside Resort and Cottages
Response to recent staff questions & Request to be Scheduled for December LPA

Dear Mr. Green:

This letter is provided to request that the subject Planned Development Rezoning petition be placed on the December 8, 2020 LPA agenda. Additionally, this letter provides responses to recent questions from staff associated with density, parking and building code issues.

Density: Staff requested that we address allowed density on the subject property.

RESPONSE: See attached Density Narrative from Beverly Grady

Parking: Staff requested that we address back-out parking conditions as part of the PD:

RESPONSE: Sheet 2 of the attached MCP depicts existing conditions and identifies all parking spaces currently in use. Those spaces are identified by numbered diamonds. All parking spaces currently require back-out movements on either Estero Boulevard, School Street or Oak Street. As part of the proposed MCP, we have improved safety conditions by eliminating all back-out movements onto Estero Boulevard, which pose the most significant safety concern. The proposed centralized, off-street parking will only allow one point of ingress from Estro Boulevard and one point of egress onto School Street. This new configuration will reduce potential points of conflict and will improve circulation on and off the property. Additionally, the overall number of back-out parking spaces will be reduced from 18 to 11. All remaining back-out spaces are on Oak and School Streets, which are local roads with low posted speeds. These parking spaces have served existing buildings for many years and have not been a traffic or safety problem over that time. A deviation allowing back-out movements is included in the MCP and request as part of the rezoning petition.

Building Code: Staff requested that the Applicant meet with the Town of Fort Myers Beach Building Official to address potential improvements that may be required for existing buildings.

RESPONSE: Bob Stewart, (Myerside Resort and Cottages consultant) and Roland Weinmann met with town staff Jack McStravic and Steve Wick on Friday, Nov 13 2020, 10 a.m. to review the application for rezone by Myerside, LLC and to discuss potential challenges with respect to FEMA rules. Specifically, the group discussed

Page 1

if any existing buildings on the property, not being moved in the application, might have to be raised as a result of the rezone. It was concluded by the town that they did not see any reason why the existing buildings would need to be raised. The group then discussed commercial code requirements and the need to upgrade buildings, etc. They reviewed and discussed potential 50% rule challenges. It was concluded that the only potential challenge might be with the proposed restaurant renovation, but that careful planning and strategic permitting would likely provide for approvals within the 50% rule framework.

We believe that we have addressed your remain questions associated with this petition and look forward to hearing back from you related to the December LPA agenda.

Sincerely,



Patrick Vanasse, AICP
Director of Community Development

Cc: Attorney
Applicant
Encl.: Density Narrative
MCP



MEMO

TO: Patrick Vanasse

FROM: Beverly Grady

DATE: November 12, 2020

RE: Myerside - insertion into our submittal response to staff / Density

The Subject Property consists of Lots 23-34, Block C, Winkler Subdivision and is designated as Boulevard pursuant to Policy 4-B-5. Boulevard is defined as follows:

POLICY 4-B-5 “BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overly” indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

The maximum density is 10 units per acre for legally existing dwelling units. Lots 23 through 28 have five lawful dwelling units consisting of one unit in Buildings 1, 2, and 3 and two units in Building 4. Lots 29 through 34 have been recognized by the Town Council as having seven lawful dwelling units. Lots 29 through 34 have been approved by the Town Council with a special exception to operate as a bed-and-breakfast. See SEZ2015-0006 where the staff report sets forth a detailed history of Lots 29 through 34 that contain “seven dwelling units” (see page 3 of 12 of staff report) and also includes staff’s research of the Lee County Property Appraiser field cards and set forth Building 5 has two units, Building 6 has four units, and Building is one unit. Based upon the staff report and based on Council’s approval of the special exception, the approval of the special exception for bed-and-breakfast found that request consistent with the Town’s Comprehensive Plan and specifically Policy 4-C-2 Commercial Intensity, Policy 4-C-3 Commercial Location, for commercial uses, and cited that “the neighborhood context of the property commercial



uses is of paramount importance. Therefore, the Subject Property is entitled to the benefit of the platted overlay since it meets the criteria of 10 lawful dwelling units.

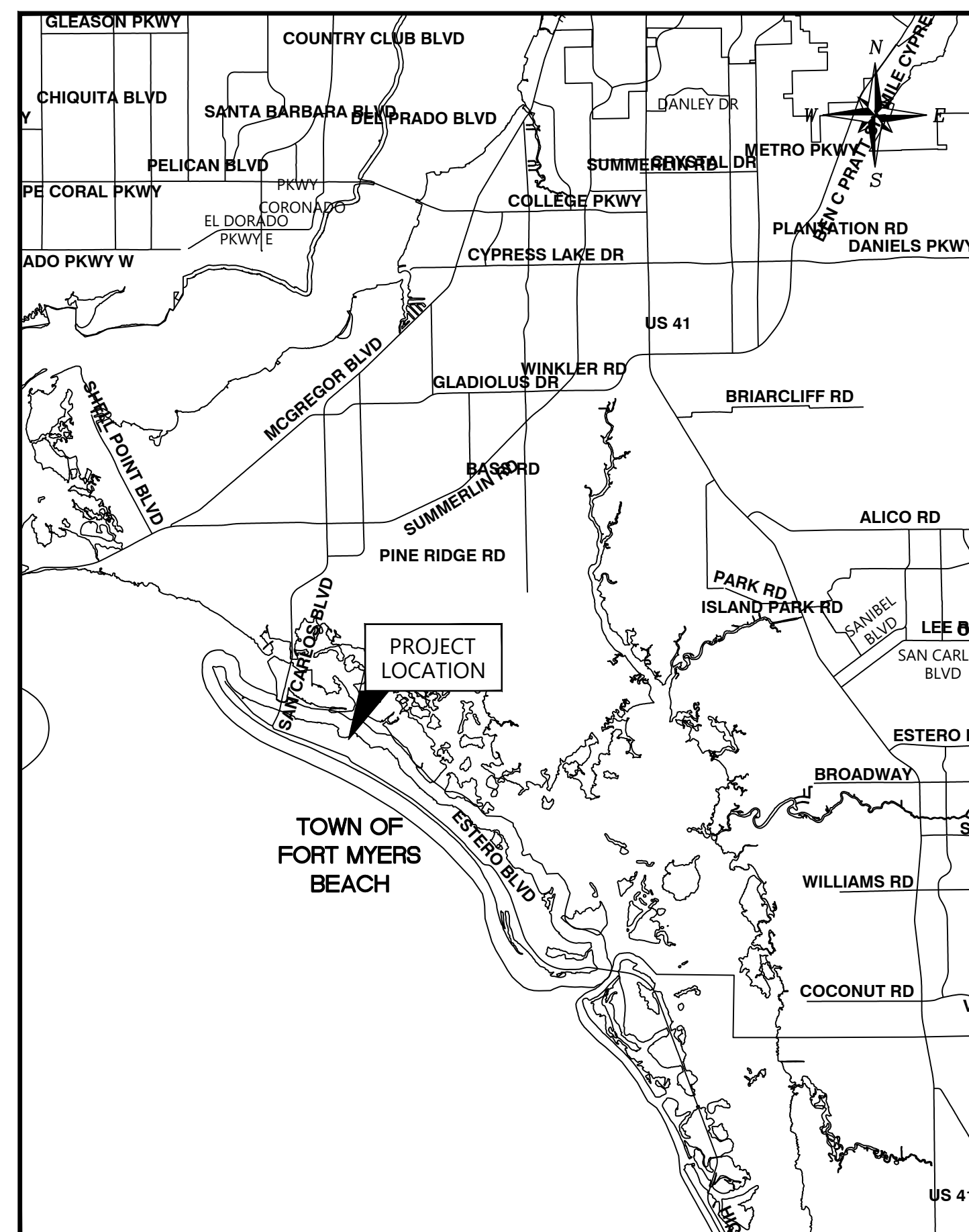
The Community Development staff testified in SEZ2015-0006 that “there were seven legal units on the property, she (staff) reviewed the platted overly for existing units which allowed 10 units per acre. The current zoning would allow seven units ... (see page 3 of LPA minutes January 12, 2016).

In summary, the Subject Property meets the criteria of lawfully existing 10 units to take the benefit of the platted overlay

BG/ro

MASTER CONCEPT PLAN FOR MYERSIDE RESORT AND COTTAGE COMMERCIAL PLANNED DEVELOPMENT

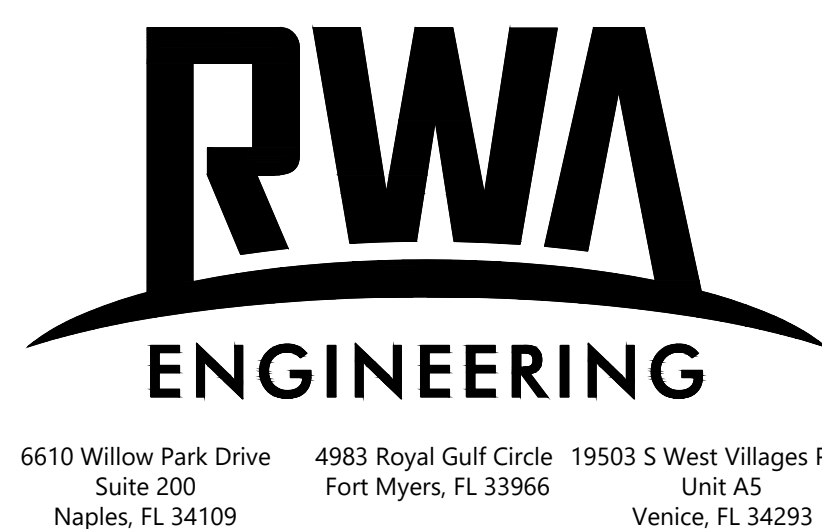
TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46S, RANGE 24E,
LEE COUNTY, FLORIDA



VICINITY MAP



SITE LOCATION MAP



Office: (239) 597-0575
Fax: (239) 597-0578
www.consult-rwa.com

Florida Certificates of Authorization
FB 7663 IB 6952

PREPARED FOR/OWNED BY:
MYERSIDE, LLC.
145 SCHOOL ST.
FORT MYERS BEACH, FL 33931

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN-EXISTING CONDITIONS	
3	MASTER CONCEPT PLAN - PHASE 1	
4	MASTER CONCEPT PLAN - PHASE 2	
DATE:	PROJECT No.:	SHEET No.:
JUNE 12, 2020	200022.00.00	1 OF 4

SCHEDULE OF USES

RESIDENTIAL:
DWELLING UNITS, SINGLE OR 2-UNIT OR MULTI-FAMILY

RESIDENTIAL ACCESSORY USES:
ACCESSORY APARTMENT, RESIDENTIAL ACCESSORY USE

LODGING:
BED AND BREAKFAST, HOTEL/MOTEL, GUEST UNITS,
RENTAL OF ANY PERMITTED UNIT PER PERIODS OF ONE
DAY OR LONGER,
RESORT

LODGING ACCESSORY UNITS:
ON-PREMISES CONSUMPTION OF ALCOHOLIC
BEVERAGES, RESORT ACCESSORY USE, PERSONAL
SERVICES, RECREATIONAL FACILITIES, CARETAKER UNIT

RETAIL:
SUBORDINATE COMMERCIAL USES, RETAIL STORE,
SMALL RESTAURANT

SITE DEVELOPMENT REGULATIONS

PRINCIPAL STRUCTURES
MINIMUM STREET SETBACK: 2.6 FEET FOR EXISTING BUILDING #3; 10 FEET FOR ALL OTHER EXISTING STRUCTURES AND
NEW OR RELOCATED STRUCTURES
MINIMUM SIDE SETBACK: 4.3 FEET FOR EXISTING STRUCTURES; 7 FEET FOR NEW OR RELOCATED STRUCTURES
MAXIMUM HEIGHT: 30 FEET PER LDC SECTION 34-631, MAXIMUM 3 STORIES
MINIMUM LOT SIZE: 20,000 SQUARE FEET
MINIMUM LOT WIDTH: 100 FEET
MINIMUM LOT DEPTH: 100 FEET
MINIMUM BUILDING SEPARATION: 15 FEET
MAXIMUM FLOOR AREA RATIO: 1.2

ACCESSORY STRUCTURES
MINIMUM SIDE SETBACK: SAME AS PRINCIPAL STRUCTURES, EXCEPT FOR THE ACCESSORY STRUCTURE TO BUILDING 7, WHICH
WILL HAVE A MINIMUM SETBACK OF 3 FEET; AND THE ACCESSORY GARAGE FOR BUILDING 4, WHICH
WILL HAVE A ± 5.9' MINIMUM SETBACK.

ALL OTHER DEVELOPMENT STANDARDS SHALL BE AS SET FORTH IN LDC CHAPTER 34 OR OTHER APPLICABLE PROVISIONS IN THE LDC.

GENERAL NOTES

- 1) THIS PROJECT WILL BE DEVELOPED IN 2 PHASES.
- 2) THIS MASTER CONCEPT PLAN IS FOR PLANNING PURPOSES ONLY. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE
STRUCTURES AND OTHER IMPROVEMENTS MAY VARY SLIGHTLY. FINAL DESIGN AND IMPROVEMENT DETAILS SHALL BE PROVIDED AS
PART OF THE DEVELOPMENT ORDER (DO) PROCESS.
- 3) THIS PLANNED DEVELOPMENT IS A REDEVELOPMENT PROJECT, WHICH INCLUDES EXISTING SITE IMPROVEMENTS AND STRUCTURES AS
WELL AS PLANNED IMPROVEMENTS. THE INTENT OF THIS MCP IS TO REALISTICALLY DEPICT THOSE CONDITIONS AND REGULATE
ALLOWED USES; HOWEVER, IT SHOULD NOT RESTRICT THE ABILITY TO MAKE OTHER SITE IMPROVEMENTS IF THOSE ARE CONSISTENT
WITH THE GENERAL CONCEPT DEPICTED ON THE MCP AND IN COMPLIANCE WITH APPLICABLE LDC PROVISIONS.
- 4)PER LDC SECTION 34-2015(4) STACKING OF PARKING SPACES IS ALLOWED WHEN ASSOCIATED WITH A DRIVEWAY, CARPORT OR
UNDER-BUILDING PARKING.
- 5)PER LDC SECTION 34-2017, THE PARKING ASSOCIATED WITH THIS PROJECT IS CONSIDERED “LOW TURNOVER” AND THEREFORE
ALLOWS ALTERNATIVE UNPAVED SURFACES AS OUTLINED IN THE LDC.
- 6)PER LDC SECTION 34-1987(A), NO OFF-STREET LOADING AREA IS REQUIRED FOR THIS PROJECT.

BUILDING DETAILS

- ① ONE STORY, ONE UNIT, +/-700 SF
② TWO STORIES, TWO UNITS, +/- 950 SF
③ ONE STORY, ONE UNIT, +/- 700 SF
④ PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
⑤ TWO STORIES , TWO UNITS, +/- 1,393 SF
AND RESORT OFFICE, 269 SF
⑥ TWO STORIES, FOUR UNITS, +/- 3,122 SF
⑦ ONE STORY, ONE UNIT, +/- 504 SF

PARKING

REQUIRED SPACES: 32
PROVIDED SPACES: 34 (PHASE 1)
36 (PHASE 2)

X - EXISTING PARKING SPACES



0102040

DATE

11/11/2020

HD PV

DRAWN

PERFORMED

DATE

11/11/2020

2

1

4

RWA

ENGINEERING

WWW.CONSL

Office: 239.516.6100

Florida Professional Seal

MYERSIDE, LLC.

MYERSIDE RESC

COMMERCIA

MASTER

CLIENT:

PROJECT:

TITLE:

DATE:

JUNE 12, 2020

DESIGNED:

PV

SRC:

TWP:

RES:

24E

DRAWN:

DLP

PROJECT NO.:

200022.00.00

SHEET NUMBER:

2 OF 4

DENSITY

12 GUEST UNITS / 6.5 EQUIVALENCY UNITS

BUILDING DETAILS

- 1 ONE STORY, RESTAURANT, +/-700 SF
- 2 TWO STORIES, TWO UNITS, +/- 950 SF
- 3 ONE STORY, RETAIL, +/- 700 SF
- 4 PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
- 5 TWO STORIES , TWO UNITS, +/- 1,393 SF AND RESORT OFFICE, 269 SF
- 6 TWO STORIES, FOUR UNITS, +/- 3,122 SF
- 7 ONE STORY, ONE UNIT, +/- 504 SF

PHASING

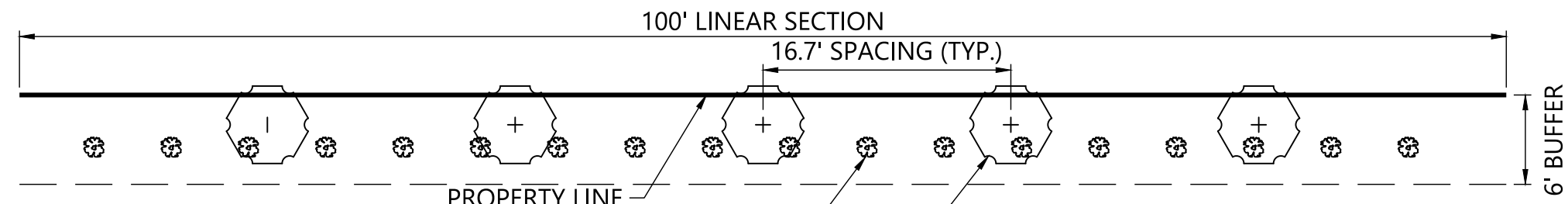
- PHASE 1
- SUBPHASE A: MOVE BUILDING 2
 - SUBPHASE B: BUILD CENTRALIZED PARKING AREA (GRAVEL + WHEEL STOPS WITH CONTROLLED POINTS OF INGRESS/EGRESS
 - SUBPHASE C: CONVERT BUILDING 3 TO RETAIL USE
 - SUBPHASE D: CONVERT BUILDING 1 TO A RESTAURANT AND ADD OUTDOOR SEATING

NOTES

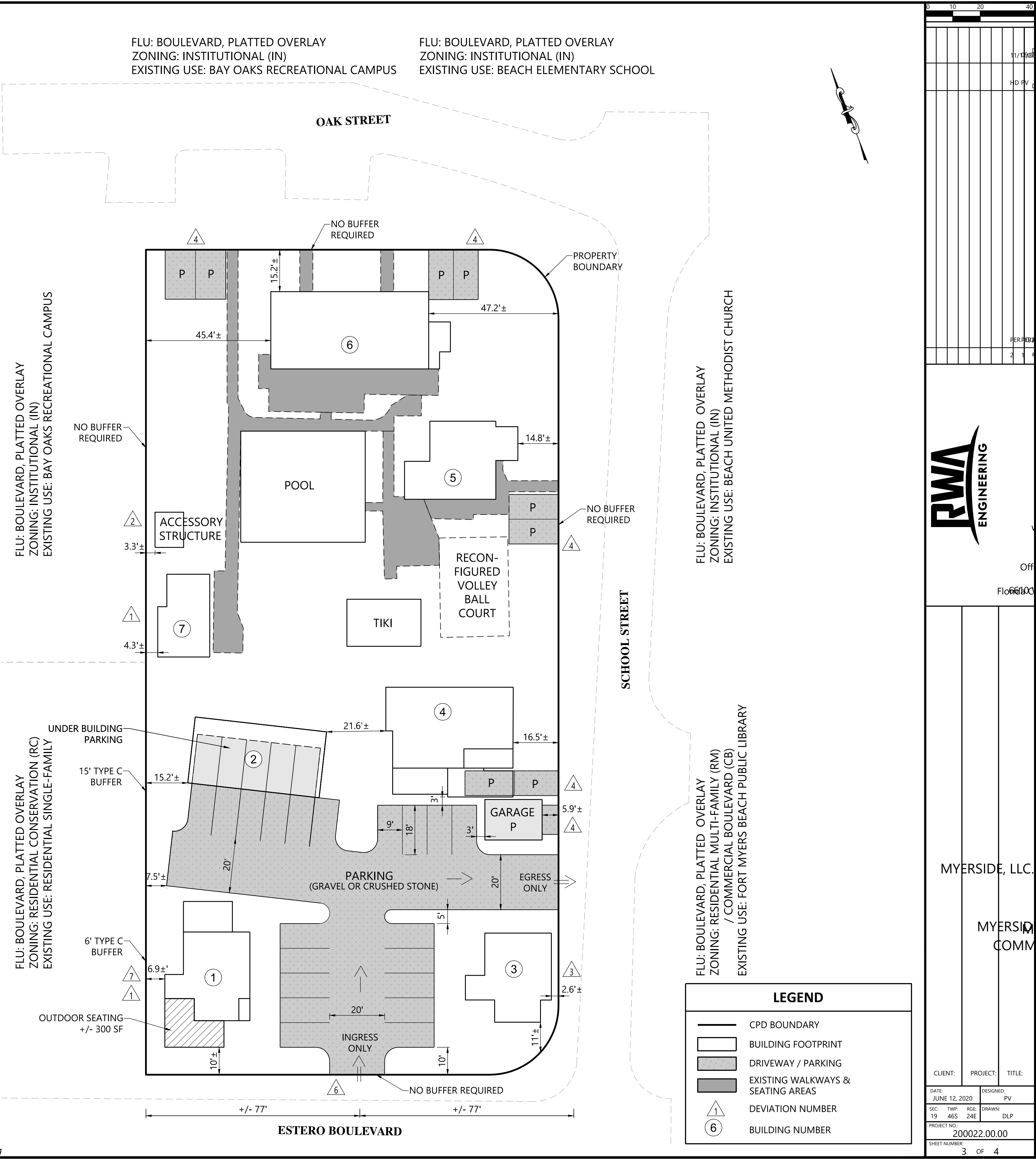
- ALL STRUCTURES IDENTIFIED ON THIS SHEET (PHASE 1) ARE EXISTING STRUCTURES. ALL STRUCTURES TO REMAIN IN EXISTING LOCATIONS EXCEPT BUILDING 2, WHICH WILL BE RELOCATED FROM ITS CURRENT LOCATION (SEE SHEET 1) TO THE LOCATION IDENTIFIED ON THIS SHEET.
- INDIVIDUAL PARKING SPACES AND PARKING AREAS WILL MEET LDC DIVISION 26 REQUIREMENTS EXCEPT FOR SPACES SUBJECT TO DEVIATION 4 AS IDENTIFIED ON THE MCP.
- ALL PRINCIPAL STRUCTURES MEET OR EXCEED THE 15' MINIMUM SEPARATION REQUIREMENT.
- WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT TIME OF D.O.
- THIS CPD WILL PROVIDE OPEN SPACE IN ACCORDANCE WITH LDC SECTION 10-415 AND AS MODIFIED BY DIVISION #7.
- EXISTING STRUCTURES ARE DEEMED NON-CONFORMING BUILDINGS IN ACCORDANCE WITH LDC -SECTION 34-3202, POTENTIAL FUTURE IMPROVEMENTS TO THOSE BUILDINGS WILL COMPLY WITH DIVISION 2 OF THE LDC.

SCHEDULE OF DEVIATIONS

- DEVIATION #1:** A DEVIATION FROM LDC TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICT THAT REQUIRES 15' SIDE SETBACKS FOR THE CR ZONING DISTRICT (*PER LDC SEC 34-953 BUILDING PLACEMENT, SIZE, DESIGN, AND ALL OTHER PROPERTY DEVELOPMENT REGULATIONS IN A CPD ZONING DISTRICT SHALL BE THE SAME AS FOR THE CR ZONING DISTRICT FOR CPDS THAT ARE PRIMARILY LODGING...*) TO ALLOW A ±6.9' FOR BUILDING 1, ±4.3' FOR BUILDING 7 AND ±7' FOR BUILDING 8.
- DEVIATION #2:** A DEVIATION FROM LDC SECTION 34-1174(2)(A) THAT REQUIRES ACCESSORY STRUCTURE SETBACKS TO BE THE SAME AS PRINCIPAL STRUCTURES OR 15' TO ALLOW A 3' SIDE SETBACK FOR THE ACCESSORY STRUCTURE ASSOCIATED WITH BUILDING 7, AND +/- 5.9' FOR THE ACCESSORY GARAGE ASSOCIATED WITH BUILDING 4.
- DEVIATION #3:** A DEVIATION FROM LDC TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICT THAT REQUIRES 10' STREET SETBACKS FOR THE CR ZONING DISTRICT (*PER LDC SEC 34-953 BUILDING PLACEMENT, SIZE, DESIGN, AND ALL OTHER PROPERTY DEVELOPMENT REGULATIONS IN A CPD ZONING DISTRICT SHALL BE THE SAME AS FOR THE CR ZONING DISTRICT FOR CPDS THAT ARE PRIMARILY LODGING...*) TO ALLOW A ±2.6' SETBACK FOR BUILDING 3.
- DEVIATION #4:** A DEVIATION FROM LDC SECTION 34-2015 (5), WHICH REQUIRES THAT “ALL PARKING LOTS MUST BE PROVIDED WITH SUFFICIENT MANEUVERING ROOM SO AS TO ALLOW AN EXITING VEHICLE TO LEAVE THE PARKING LOT IN A FORWARD MOTION...”, TO ALLOW EXITING VEHICLES TO LEAVE PARKING SPACES BY BACKING ONTO SCHOOL OR OAK STREETS.
- DEVIATION #5:** A DEVIATION FROM THE DRIVEWAY SEPARATION REQUIREMENTS OF LDC SECTION 10-296 ALONG ESTERO BOULEVARD TO ALLOW A DRIVEWAY ACCESS TO THE SUBJECT PROPERTY THAT IS ±77' FROM THE CLOSES ACCESS POINT TO THE NORTH AND ±77 TO SCHOOL STREET.
- DEVIATION #6:** 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 6' TYPE C BUFFER AS INDICATED ON THE MASTER CONCEPT PLAN.
- DEVIATION #7:** A DEVIATION FROM LDC SECTION 34-202(b)(5), WHICH REQUIRED ARCHITECTURAL ELEVATIONS OR A THREE-DIMENSIONAL RENDERING, TO INSTEAD ALLOW PICTURES OF THE EXISTING STRUCTURES.



DEVIATION #7 BUFFER SECTION



DENSITY

14 GUEST UNITS / 7.3 EQUIVALENCY UNITS

BUILDING DETAILS

- ① ONE STORY, RESTAURANT, +/- 700 SF
- ② TWO STORIES, TWO UNITS, +/- 950 SF
- ③ ONE STORY, RETAIL, +/- 700 SF
- ④ PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
- ⑤ TWO STORIES, TWO UNITS, +/- 1,393 SF AND RESORT OFFICE, 269 SF
- ⑥ TWO STORIES, FOUR UNITS, +/- 3,122 SF
- ⑦ ONE STORY, ONE UNIT, +/- 504 SF
- ⑧ TWO STORIES, FOUR UNITS, +/- 1,600 SF

PHASING

PHASE 2

- ADD BUILDING 8. MAY BE NEW CONSTRUCTION OR EXISTING ISLAND COTTAGE MOVED TO THE SITE.

NOTES

- ALL STRUCTURES EXCEPT BUILDING 8 ARE EXISTING BUILDINGS.
- INDIVIDUAL PARKING SPACES AND PARKING AREAS WILL MEET LDC DIVISION 26 REQUIREMENTS EXCEPT FOR SPACES SUBJECT TO DEVIATION 4, AS IDENTIFIED ON THE MAP.
- ALL PRINCIPAL STRUCTURES MEET OR EXCEED 15' MINIMUM SEPARATION REQUIREMENT.
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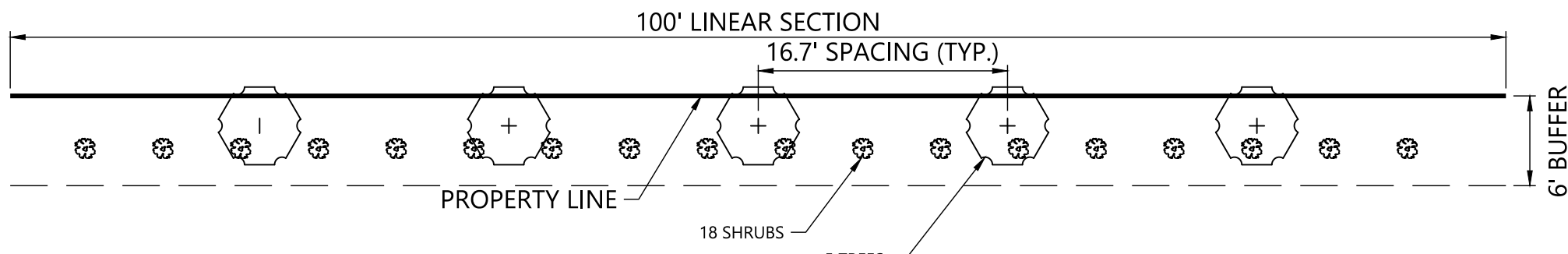
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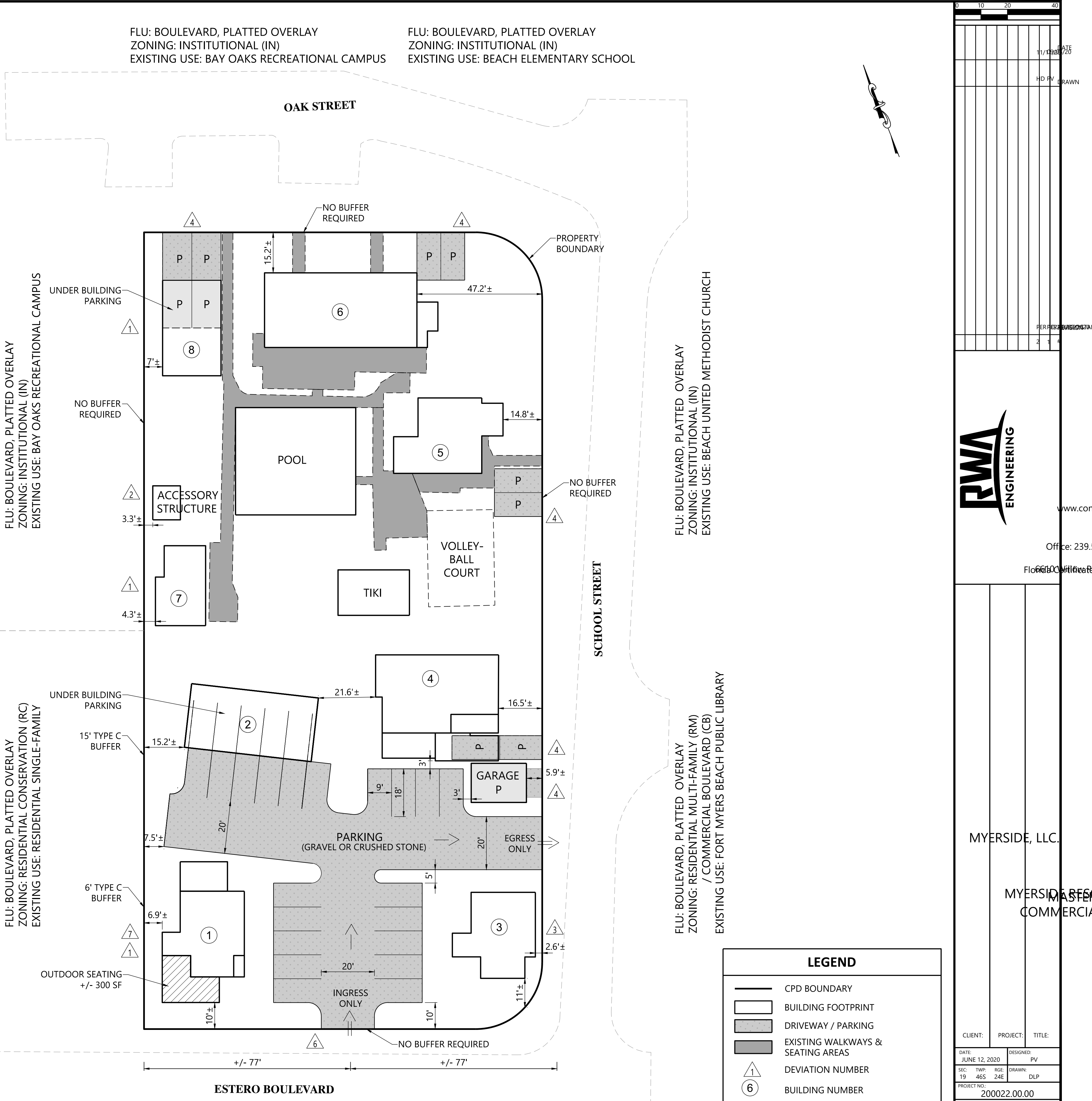
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DEVIATION #7 BUFFER SECTION





July 10, 2020

VIA E-MAIL (kbhutada@fmbgov.com) AND REGULAR U. S. MAIL

Ms. Kelly Bhutada
Town of Fort Myers Beach - Community
Development
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Town of Fort Myers Beach

JUL 13 2020

Received by: _____

RE: DCI #20200009
Myerside Resort and Cottages
Response to Insufficiency Letter of February 19, 2020

Dear Ms. Bhutada:

This is our response to your February 19, 2020 insufficiency letter with regard to the above-referenced application. We have placed your comment first and provided a response following:

1. As required under PART-V (B) of Public Hearing application, please provide signed and sealed boundary survey and a sketch of legal description describing the entire continuous perimeter boundary of the property subject to the zoning action.

Response: By separate e-mail you have agreed that since this is platted property that no boundary survey or sealed sketch of legal description is required.

2. Please revised the master concept plan (MCP) to provide all details as given under Town's Land Development Code Sec. 34-212. Additionally provide Architectural elevation drawings.

Response: Enclosed is a revised 4-page Master Concept Plan dated June 12, 2020, which contains the following:

Schedule of Uses
Site Development Regulations
Building Details
Parking
Schedule of Deviations
General Notes
Phasing plans

Phase 1 contains sub-phase A, sub-phase B, sub-phase C, and sub-phase D. The timing of which can be altered as to the sequence of implementation of the phases. Also included is a revised list of deviations and justification for deviations to accompany the revised Master Concept Plan. Phase 1 includes the relocation of Building 2. Phase 2 includes adding Building 8 to the site. Since seven of the eight buildings exist, the architectural theme is established and the 8th building will be consistent with that architectural theme. Exhibit C to the Narrative reflect the architectural theme of Old Fort Myers Beach cottages for the Subject Property. Also enclosed is a revised Narrative regarding consistency with the Comprehensive Plan of Fort Myers Beach and the consistency with the criteria for rezoning in the Land Development Code.

3. Provide parking calculations compliance with Town's Land Development Code Chapter 34, Article IV, Division 26. Additionally, parking spaces provided on site plan exceeds actual parking spaces on the site. Please revise the MCP to provide correct details.

Response: Maximum parking requirements are based on the following:

- Building 1 - restaurant with outdoor seating - 8 spaces
- Building 2 - 2 guest units - 2.4 spaces
- Building 3 - retail - 2.1 spaces
- Building 4 - 1 guest units - 1.5 spaces
- Building 5 - 2 guest units and office - 4.5 spaces
- Building 6 - 4 units - 6 spaces
- Building 7 - 1 unit - 1.5 spaces
- Building 8 - 4 units - 4.8 spaces

There will be at least 32 parking spaces (which may include a bike rack).

-
4. The Proposed development provide parking that will encroach in to the public Right of Way (ROW). No parking space shall encroach in to the ROW, please revise MCP.

Response: Parking encroaching into the ROW has been removed from the MCP.

5. Provide proof of ownership of Red Shutter Cottage and provide authorization from the owner to move the structure on the island.

Response: This is a request for rezoning to Commercial Planned Development (CPD). There is no specific request for a named cottage which may or may not be transferred to the site. Building 8 will be an additional building of 1,600 square

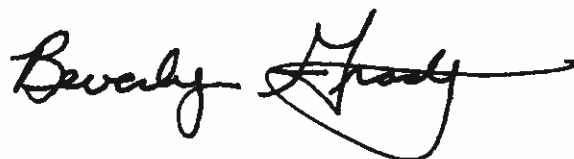
Ms. Kelly Bhutada - Town of Fort Myers Beach
July 10, 2020
Page 3

feet in compliance with the architecture typical of Fort Myers Beach cottages and proposed in Exhibit C.

Also enclosed please find a revised Exhibit 4-1 to Part IV - Property Ownership as the ownership for Lots 29 through 34 have been transferred to Myerside LLC.

Very truly yours,

ROETZEL & ANDRESS, LPA

A handwritten signature in black ink, appearing to read "Beverly Grady", with a stylized flourish at the end.

Beverly Grady

BG/ro

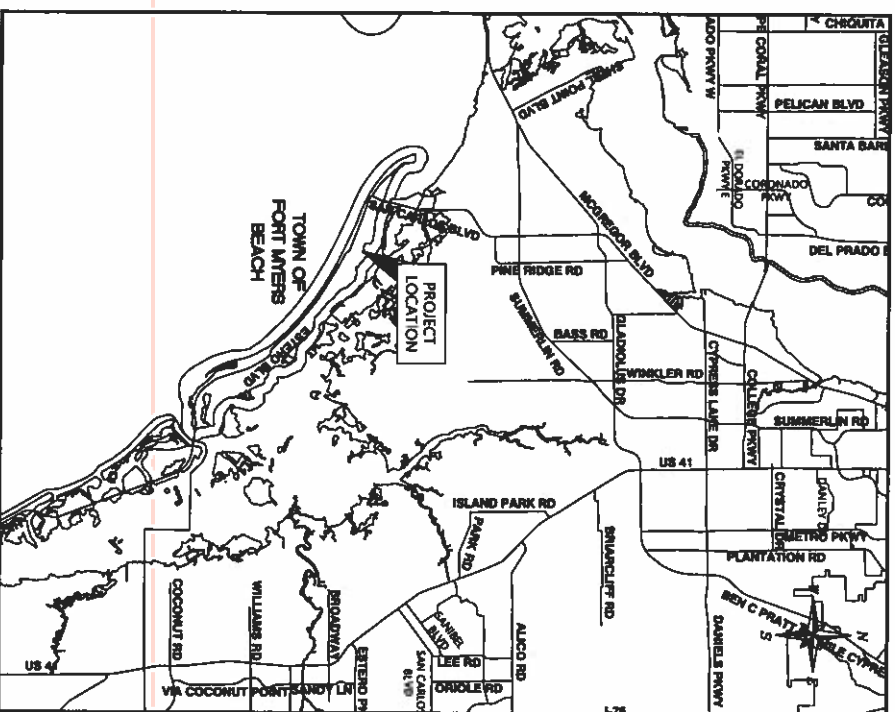
Enclosures (3 sets are provided):

- Revised Master Concept Plan
- Revised Deviations and Justifications
- Revised Narrative
- Exhibit C to Narrative
- Revised Exhibit 4-1 to Part IV - Property Ownership

MASTER CONCEPT PLAN FOR
MYERSIDE RESORT AND COTTAGE

PLANNED DEVELOPMENT

TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46S, RANGE 24E,
LEE COUNTY, FLORIDA



VICINITY MAP
N.T.S.



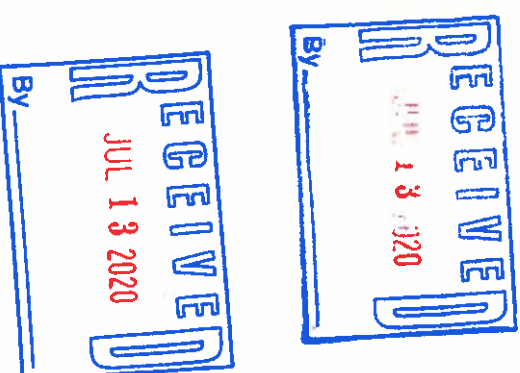
SITE LOCATION MAP
N.T.S.



6610 Withers Park Drive
Suite 200
Fort Myers, FL 33906
Myers, FL 34109

Office: (239) 597-0575
Fax: (239) 597-0578
www.rma-engineering.com
Florida Certificate of Authorization
ES 7663, LB 6952

PREPARED FOR/OWNED BY:
MYERSIDE, LLC.
145 SCHOOL ST.
FORT MYERS BEACH, FL 33931



CONTENTS	
SHEET NUMBER	SHEET DESCRIPTION
1	COVER SHEET
2	MASTER CONCEPT PLAN-EXISTING CONDITIONS
3	MASTER CONCEPT PLAN - PHASE 1
4	MASTER CONCEPT PLAN - PHASE 2
DATE: JUNE 12, 2020	PROJECT No.: 200022.00.00
	SHEET No.: 1 of 4

SCHEDULE OF USES

DWELLING UNITS, SINGLE OR 2-UNIT OR MULT-FAMILY
BED AND BREAKFAST
HOTEL/MOTEL
GUEST UNITS
RENTAL OF ANY PERMITTED UNIT PER PERIODS OF ONE DAY OR LONGER
RESORT
ACCESSORY APARTMENT
RESIDENTIAL ACCESSORY USE
ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES
RESORT ACCESSORY USE
PERSONAL SERVICES
SUBORDINATE COMMERCIAL USES
RECREATIONAL FACILITIES
RETAIL STORE, SMALL
RESTAURANT

BUILDING DETAILS

- ① ONE STORY, ONE UNIT, +/-700 SF
- ② TWO STORIES, TWO UNITS, +/- 950 SF
- ③ ONE STORY, ONE UNIT, +/- 700 SF
- ④ PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
- ⑤ TWO STORIES, TWO UNITS, +/- 1,393 SF
- ⑥ AND RESORT OFFICE, 269 SF
- ⑦ TWO STORIES, FOUR UNITS, +/- 3,122 SF
- ⑧ ONE STORY, ONE UNIT, +/- 504 SF

PARKING

REQUIRED SPACES:	32
PROVIDED SPACES:	33 (PHASE 1)
	35 (PHASE 2)

SITE DEVELOPMENT REGULATIONS

PRINCIPAL STRUCTURES
MINIMUM STREET SETBACK: 4 FEET
MINIMUM SIDE SETBACK: 4.3 FEET
MAXIMUM HEIGHT: 30 FEET PER LDC SECTION 34-631, MAXIMUM 3 STORIES
MINIMUM LOT SIZE: 20,000 SQUARE FEET
MINIMUM LOT WIDTH: 100 FEET
MINIMUM LOT DEPTH: 100 FEET
MINIMUM BUILDING SEPARATION: 15 FEET
MAXIMUM FLOOR AREA RATIO: 1.2

ACCESSORY STRUCTURES
MINIMUM SIDE SETBACK: SAME AS PRINCIPAL STRUCTURES, EXCEPT FOR ACCESSORY SHED TO BUILDING 7, WHICH WILL HAVE A MINIMUM SETBACK OF 3 FEET.

ALL OTHER DEVELOPMENT STANDARDS SHALL BE AS SET FORTH IN LDC CHAPTER 34 OR OTHER APPLICABLE PROVISIONS IN THE LDC.

SCHEDULE OF DEVIATIONS

DEVIATION #1: A DEVIATION FROM LDC TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICT THAT REQUIRES 15' SIDE SETBACKS FOR THE CR ZONING DISTRICT (PER LDC SEC 34-953 BUILDING PLACEMENT, SIZE, DESIGN, AND ALL OTHER PROPERTY DEVELOPMENT REGULATIONS IN A CPD ZONING DISTRICT SHALL BE THE SAME AS FOR THE CR ZONING DISTRICT FOR CPDS THAT ARE PRIMARILY LODGING...) TO ALLOW A 46.9' FOR BUILDING 1, 44.3' FOR BUILDING 7 AND 47' FOR BUILDING 8.
DEVIATION #2: A DEVIATION FROM LDC SECTION 34-1174(2)(A) THAT REQUIRES ACCESSORY STRUCTURE SETBACKS TO BE THE SAME AS PRINCIPAL STRUCTURES OR 15' TO ALLOW A 3' SIDE SETBACK FOR THE ACCESSORY SHED ASSOCIATED WITH BUILDING 7.
DEVIATION #3: A DEVIATION FROM LDC TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICT THAT REQUIRES 10' STREET SETBACKS FOR THE CR ZONING DISTRICT (PER LDC SEC 34-953 BUILDING PLACEMENT, SIZE, DESIGN, AND ALL OTHER PROPERTY DEVELOPMENT REGULATIONS IN A CPD ZONING DISTRICT SHALL BE THE SAME AS FOR THE CR ZONING DISTRICT FOR CPDS THAT ARE PRIMARILY LODGING...) TO ALLOW A 44' FOR BUILDING 3.
DEVIATION #4: A DEVIATION FROM LDC SECTION 34-2015 (5), WHICH REQUIRES THAT "ALL PARKING LOTS MUST BE PROVIDED WITH SUFFICIENT MANEUVERING ROOM SO AS TO ALLOW AN EXITING VEHICLE TO LEAVE THE PARKING LOT IN A FORWARD MOTION...", TO ALLOW EXITING VEHICLES TO LEAVE PARKING SPACES BY BACKING ONTO SCHOOL OR OAK STREETS.
DEVIATION #5: A DEVIATION FROM LDC SECTION 34-2016, DIMENSIONAL REQUIREMENTS, DELINEATION OF PARKING SPACES, TO ALLOW COMPACT CAR PARKING SPACES 0 8' X 16' AS SPECIFICALLY IDENTIFIED ON THE MASTER CONCEPT PLAN.
DEVIATION #6: A DEVIATION FROM THE DRIVEWAY SEPARATION REQUIREMENTS OF LDC SECTION 10-296 ALONG ESTERO BOULEVARD TO ALLOW A DRIVEWAY ACCESS TO THE SUBJECT PROPERTY THAT IS 477' FROM THE CLOSES ACCESS POINT TO THE NORTH AND 477 TO SCHOOL STREET.
DEVIATION #7: A DEVIATION FROM LDC SECTION 10-416(D) TABLE 10-18 WHICH REQUIRES A 15' TYPE C BUFFER WHEN A COMMERCIAL USE ADJUTS A RESIDENTIAL USE, TO ALLOW A 6' TYPES C BUFFER AS INDICATED ON THE MASTER CONCEPT PLAN.

GENERAL NOTES

- 1) THIS PROJECT WILL BE DEVELOPED IN 2 PHASES.
- 2) THIS MASTER CONCEPT PLAN IS FOR PLANNING PURPOSES ONLY. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE STRUCTURES AND OTHER IMPROVEMENTS MAY VARY SLIGHTLY. FINAL DESIGN AND IMPROVEMENT DETAILS SHALL BE PROVIDED AS PART OF THE DEVELOPMENT ORDER (DO) PROCESS.
- 3) THIS PLANNED DEVELOPMENT IS A REDEVELOPMENT PROJECT, WHICH INCLUDES EXISTING SITE IMPROVEMENTS AND STRUCTURES AS WELL AS PLANNED IMPROVEMENTS. THE INTENT OF THIS MCP IS TO REALISTICALLY DEPICT THOSE CONDITIONS AND REGULATE ALLOWED USES; HOWEVER, IT SHOULD NOT RESTRICT THE ABILITY TO MAKE OTHER SITE IMPROVEMENTS IF THOSE ARE CONSISTENT WITH THE GENERAL CONCEPT DEPICTED ON THE MCP AND IN COMPLIANCE WITH APPLICABLE LDC PROVISIONS.
- 4) PER LDC SECTION 34-2015(4) STACKING OF PARKING SPACES IS ALLOWED WHEN ASSOCIATED WITH A DRIVEWAY, CARPORT OR UNDER-BUILDING PARKING.
- 5) PER LDC SECTION 34-2017, THE PARKING ASSOCIATED WITH THIS PROJECT IS CONSIDERED "LOW TURNOVER" AND THEREFORE ALLOWS ALTERNATIVE UNPAVED SURFACES AS OUTLINED IN THE LDC.
- 6) PER LDC SECTION 34-1987(A), NO OFF-STREET LOADING AREA IS REQUIRED FOR THIS PROJECT.

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LEGEND

RPD BOUNDARY

BUILDING FOOTPRINT

DRIVEWAY

DEVIATION NUMBER

BUILDING NUMBER

BUILDING DETAILS

- ONE STORY, RESTAURANT, +/- 700 SF
- TWO STORIES, TWO UNITS, +/- 950 SF
- ONE STORY, RETAIL, +/- 700 SF
- PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
- TWO STORIES, TWO UNITS, +/- 1,393 SF AND RESORT OFFICE, 269 SF
- TWO STORIES, FOUR UNITS, +/- 3,122 SF
- ONE STORY, ONE UNIT, +/- 504 SF

PHASING

- PHASE 1
- SUBPHASE A: MOVE BUILDING 2
- SUBPHASE B: BUILD CENTRALZED PARKING AREA (GRAVEL + WHEEL STOPS WITH CONTROLLED POINTS OF INGRESS/EGRESS
- SUBPHASE C: CONVERT BUILDING 3 TO RETAIL USE
- SUBPHASE D: CONVERT BUILDING 1 TO A RESTAURANT AND ADD OUTDOOR SEATING

FLU: BOULEVARD, PLATTED OVERLAY
ZONING: INSTITUTIONAL (IN)
EXISTING USE: BAY OAKS RECREATIONAL CAMPUS

FLU: BOULEVARD, PLATTED OVERLAY
ZONING: INSTITUTIONAL (IN)
EXISTING USE: BEACH ELEMENTARY SCHOOL

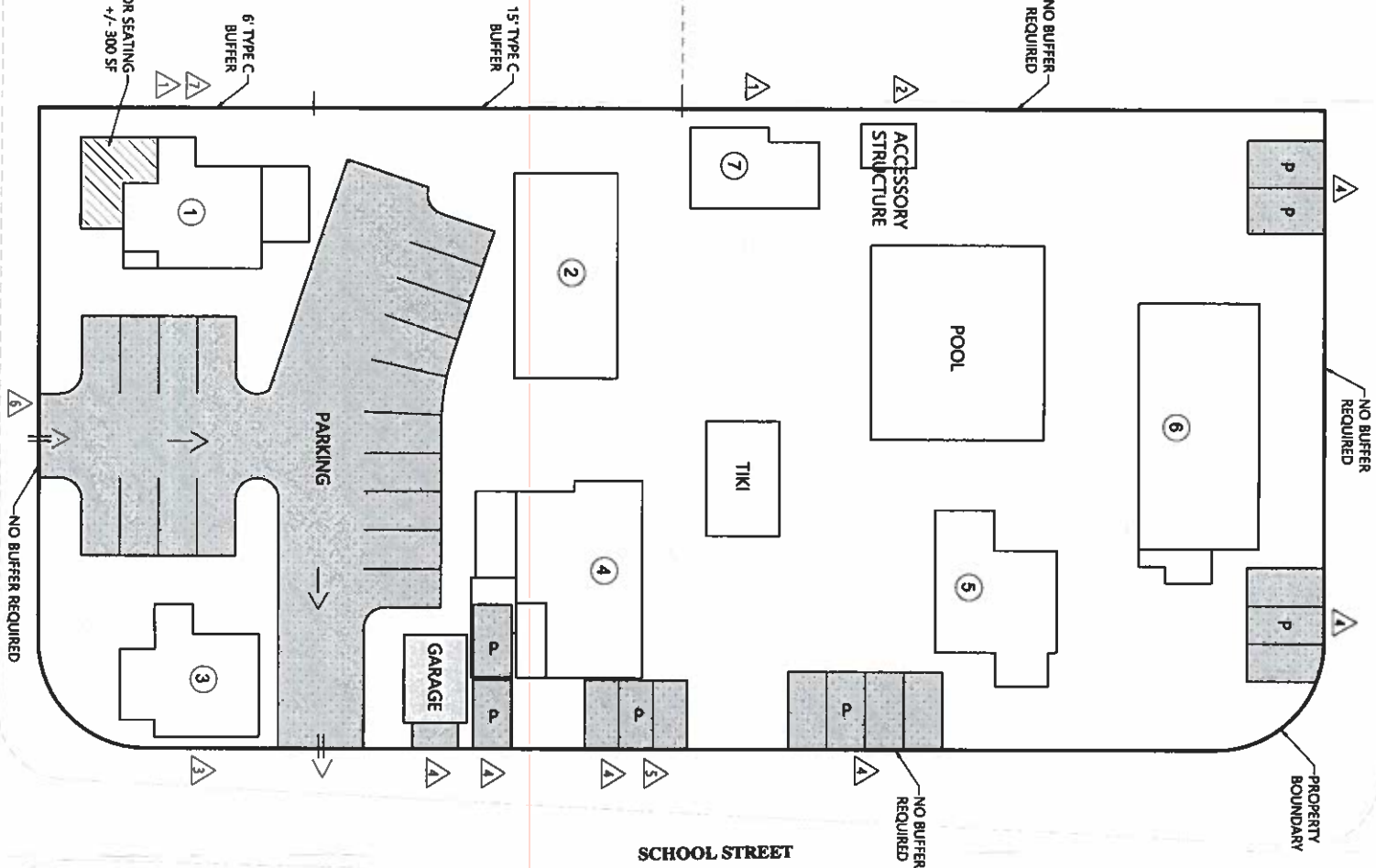
OAK STREET

FLU: BOULEVARD, PLATTED OVERLAY
ZONING: INSTITUTIONAL (IN)
EXISTING USE: BAY OAKS RECREATIONAL CAMPUS

FLU: BOULEVARD, PLATTED OVERLAY
ZONING: RESIDENTIAL CONSERVATION (RC)
EXISTING USE: RESIDENTIAL SINGLE-FAMILY

FLU: BOULEVARD, PLATTED OVERLAY
ZONING: RESIDENTIAL MULTI-FAMILY (RM)
/ COMMERCIAL BOULEVARD (CB)
EXISTING USE: FORT MYERS BEACH PUBLIC LIBRARY

FLU: BOULEVARD, PLATTED OVERLAY
ZONING: INSTITUTIONAL (IN)
EXISTING USE: BEACH UNITED METHODIST CHURCH



ESTERO BOULEVARD

SCHOOL STREET

June 25, 2020 7:39 AM K:\2020\200022.00.00\Myerside Planned Development\1002 PD Support Services & MCP\MCP Plans\103 200022000C MP02.dwg

DATE: 06/12/2020

BY: [Signature]

SCALE: 1"=40'

TOTAL SHEETS: 3

CURRENT SHEET: 3 OF 4

CLIENT: MYERSIDE, LLC.

PROJECT: MYERSIDE RESORT AND COTTAGE PLANNED DEVELOPMENT

TITLE: MASTER CONCEPT PLAN - PHASE 1

RWA

ENGINEERING

Florida Certificates of Authorization EB 7663 LB 6952
 6610 Willow Park Drive, Suite 200 | Naples, FL 34109
 Office: 239.597.0575 Fax: (239) 597-0578
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#	REVISION

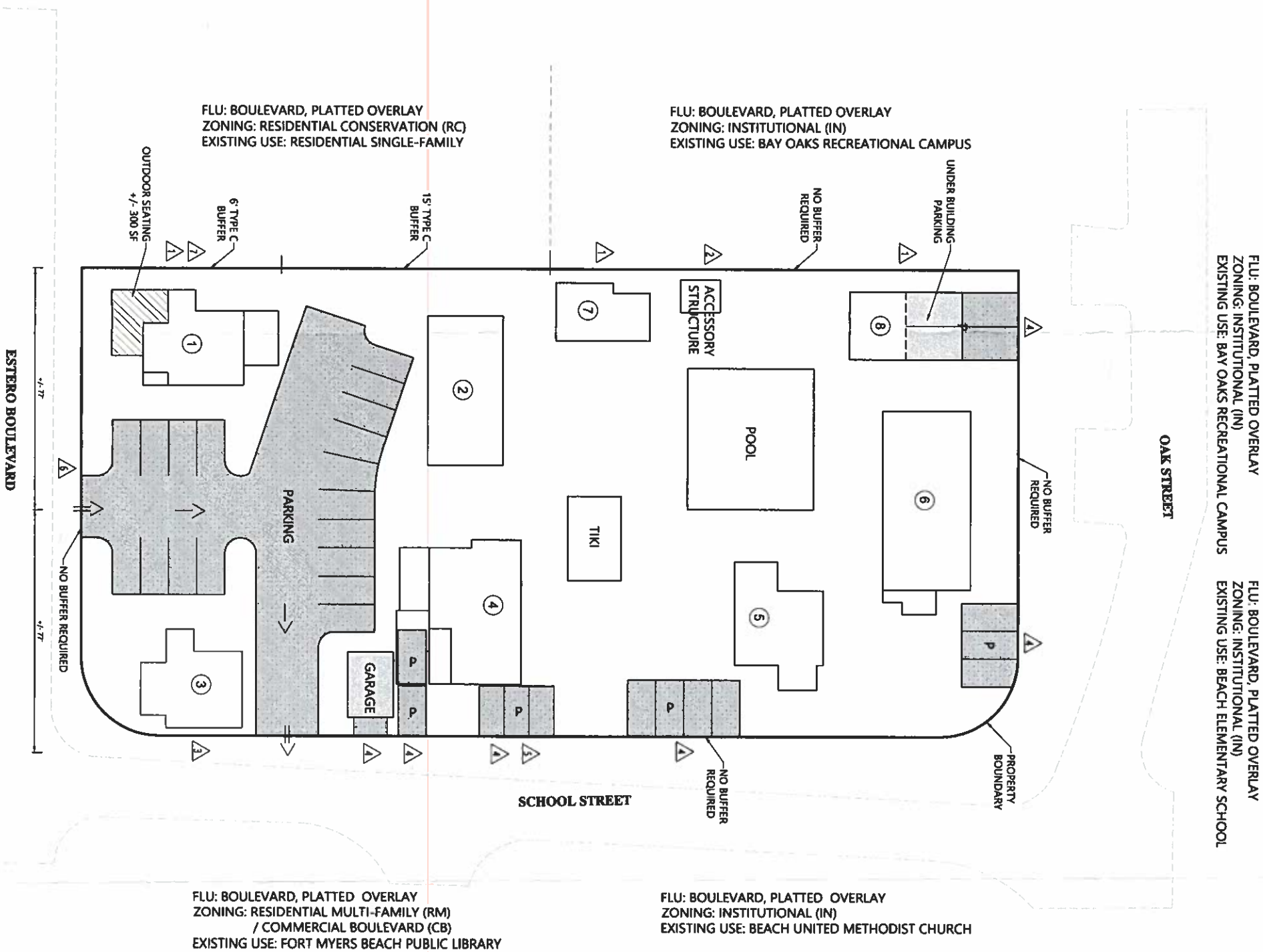
LEGEND	
	RPD BOUNDARY
	BUILDING FOOTPRINT
	DRIVEWAY
	DEVIATION NUMBER
	BUILDING NUMBER

BUILDING DETAILS

- ONE STORY, RESTAURANT, +/- 700 SF
- TWO STORIES, TWO UNITS, +/- 950 SF
- ONE STORY, RETAIL, +/- 700 SF
- PARTIAL TWO STORY, ONE UNIT, +/- 900 SF
- TWO STORIES, TWO UNITS, +/- 1,393 SF AND RESORT OFFICE, 269 SF
- TWO STORIES, FOUR UNITS, +/- 3,122 SF
- ONE STORY, ONE UNIT, +/- 504 SF
- TWO STORIES, FOUR UNITS, +/- 1,600 SF

PHASING

PHASE 2
SUBPHASE A: ADD BUILDING 8 = EXISTING OFF-SITE COTTAGE THAT WILL BE MOVED TO SUBJECT PROPERTY



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CLIENT: MYERSIDE, LLC. PROJECT: MYERSIDE RESORT AND COTTAGE PLANNED DEVELOPMENT TITLE: MASTER CONCEPT PLAN - PHASE 2		 RWA ENGINEERING Florida Certificates of Authorization E8 7663 LB 6952 6610 Willow Park Drive, Suite 200 Naples, FL 34109 Office: 239.597.0575 Fax: (239) 597-0578 www.consult-rwa.com	SHEET NO. 4 OF 4 DATE: 06/25/2020 DRAWN BY: [Name] CHECKED BY: [Name] PROJECT NO.: 200022.00.00	REVISION <table border="1"> <tr><th>NO.</th><th>DESCRIPTION</th></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </table>	NO.	DESCRIPTION						
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Myerside Resort and Cottages Planned Development Schedule of Deviations and Justifications

The Myerside Resort and Cottages CPD is a redevelopment project aimed at conserving historical beach cottages and improving the subject property to create an attractive and functional boutique resort that offers lodging, recreational amenities, and small accessory restaurant and retail components that will serve resort and the general public. The existing structures on site date back to the 1930's. Since then development regulations have changed significantly, making those existing building non-conforming. The CPD zoning option provides design flexibility to allow innovative projects and planning practices through the use of deviations and site-specific development standards. Through the CPD and the deviations below, nonconformities can be addressed, conditioned and legitimized. The deviations requested are needed because of existing historical conditions – i.e. building placement and site configuration. It should be noted that most of the buildings and site improvements have been in place for decades and have had no detrimental impact on adjacent properties. The proposed CPD is consistent with the Town's comprehensive plan and furthers the intent of the Boulevard future land use district. As stated in Policy 4-B-5, the Boulevard district allows, and promotes the conservation of historic cottages and the mixed-use nature of this area.

DEVIATION #1: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 15' side setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow $\pm 6.9'$ for Building 1, $\pm 4.3'$ for Building 7 and $\pm 7'$ for Building 8.

JUSTIFICATION: Since this is an existing condition and the structures have been in these locations for decades, it is appropriate to grant relief from the side setback requirement for buildings 1, 7 and 8. The resort concept proposed is a continuance of the Fort Myers Beach early village design. It is important to recognize that the CPD proposes a village concept that is an improvement to this neighborhood and that a reduced setback is needed for this proposed village design. The proposed deviation simply legitimizes and allows the continuation of existing conditions that have had no detrimental impacts on adjacent properties.

DEVIATION #2: A deviation from LDC Section 34-1174(2)(a) that requires accessory structure setbacks to be the same as principal structures or 15' to allow a 3' side setback for the accessory shed associated with Building 7.

JUSTIFICATION: Since this is an existing condition and the structure has been in this location for decades, it is appropriate to grant relief from the side setback requirement for the accessory shed associated with Building 7. The proposed deviation simply legitimizes and allows the continuation of an existing condition that has no detrimental impact on adjacent properties. The shed abuts the public parking lot of the Bay Oaks pool facility and will continue to have no impact to public health, safety and welfare.

DEVIATION #3: A deviation from LDC Table 34-3 Dimensional Regulations in Conventional Zoning District that requires 10' street setbacks for the CR zoning district (*Per LDC Sec 34-953 Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging...*) to allow a $\pm 4'$ for Building 3.

JUSTIFICATION: Since this is an existing condition and the structure has been in this location for decades, it is appropriate to grant relief from the street setback requirement for Buildings 3. Building 3 is an integral part of the village resort concept proposed for this property. It has been in its current location for decades, it has no detrimental impact to adjacent properties and does not affect public health, safety and welfare. The proposed deviation legitimizes and allows the continuation of this existing condition.

DEVIATION #4: A deviation from LDC Section 34-2015 (5), which requires that "all parking lots must be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion...", to allow exiting vehicles to leave parking spaces by backing onto School or Oak Streets.

JUSTIFICATION: This deviation is requested to allow the continuation of existing conditions and to accomplish the village concept in which the existing parking is located on the periphery of the property and the recreational and open space areas are located at the center of the village complex. The proposed MCP and associated parking plan allows for some existing parking spaces to maintain their "back out" configuration along Oak Street and School Street. These parking spaces account for a small amount of the overall spaces and are in proximity and accessory to existing buildings. Moreover, Oak and School Streets are local roads with very low traffic volumes and low travel speeds. The existing back out spaces have not created unsafe conditions in the past nor will they do so in the future. The parking arrangement supports the village design and ease of access and convenience for patrons of the resort. Along Estero Boulevard where buildings 1 and 3 will be converted into ancillary restaurant and retail space, the parking has been centralized and formalized to improve access, circulation and general safety conditions by reducing access points, and eliminating back up parking spaces onto Estero Boulevard. The proposed improvement, in combination with the proposed deviation, will allow a much-improved parking plan, while allowing the village resort look and feel to be maintained.

DEVIATION #5: A deviation from LDC Section 34-2016, Dimensional requirements; delineation of parking spaces, to allow Compact Car parking spaces of 8' x 16' as specifically identified on the Master Concept Plan.

JUSTIFICATION: This deviation is requested in conjunction with deviation #4, to allow the continuation of existing parking conditions, and in support of the parking plan and village concept where accessory parking is proximate to individual buildings located on the periphery of the property. The proposed deviation allows for a slight reduction in parking space width and length. The proposed dimensions are consistent with compact parking spaces allowed throughout southwest Florida and the rest of the country. Some of the existing sub-standard spaces that are smaller than 8'x16' have been eliminated or moved slightly from their existing location to be consistent with the proposed deviation. The reduced dimensions will not have any impact on public health, safety and welfare.

DEVIATION #6: A deviation from the driveway separation requirements of LDC Section 10-296 along Estero Boulevard to allow a driveway access to the subject property that is $\pm 66'$ from the closes access point to the north and $\pm$ to School Street.

JUSTIFICATION: This is a request for a deviation from driveway access separation along Estero Boulevard. Currently, there are two driveway accesses from Estero Boulevard to the subject property. The two access points are being reduced to one access point. Phase 1 relocates Building 2 and creates one access point to a parking lot that will services the proposed accessory restaurant (Building 1) and retail (Building 3), as well as the guest units. This new configuration eliminates existing "back up" parking along Estero and limits the Estero access point to "ingress only" and the School access point to "egress only." This configuration will improve circulation patterns and safety conditions. The proposed access point on Estero is located $\pm 77'$ from the nearest driveway to the north and $\pm 77'$ from School Street to the south.

DEVIATION #7: 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 6' Types C buffer as indicated on the Master Concept Plan.

JUSTIFICATION: This deviation is requested in conjunction with deviation #1 and provides relief to the buffer separation requirement due to existing site conditions. Building 1 is located approximately 6.9' from the adjacent property line where code requires a 15' Type C buffer. Along the length of Building 1, this deviation will allow the required Type C plantings and fence to be located within a 6' strip rather than a 15' strip. The proposed buffer will provide the required Type C plantings and fence but the buffer width will be reduced to accommodate Building 1 that has been in this location for decades. This deviation meets the intent of the buffer requirement, while not having any detrimental impact on the adjacent property and public health, safety and welfare.

MYERSIDE RESORT AND COTTAGES NARRATIVE
SUPPORTING CONSISTENCY WITH FORT MYERS BEACH COMPREHENSIVE PLAN,
CRITERIA FOR REZONING LDC 34-85; DESIGN GUIDELINES,
Revised July 10, 2020

This is a request to rezone Lots 23-34, Block C, Winklers Subdivision from RC to Commercial Planned Development (CPD) for a resort community (Subject Property) Myerside Resort and Cottages. The Subject Property is located at 2661-2681 Estero Boulevard, 125 and 131-151 School Street – 3 contiguous parcels. The Subject Property is designated as Boulevard in the Future Land Use Map attached as Exhibit A which is defined as follows:

POLICY 4-B-5 “BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overly” indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

The Subject Property consists of 3 strap numbers and is located within the platted overlay which permits 10 dwelling units to the acre and requests a rezoning to CPD. Lots 23–28 are currently owned by Cottages at Myerside LLC and that parcel contains 5 structures with 5 dwelling units. Lots 29-34 which were owned by Weinmann Realty LLC have been transferred to Myerside LLC and that parcel contains 3 structures with 7 dwelling units. Although the official plat is sufficient for the legal description and boundary of the Subject Property, please find Exhibit 5-2 the survey attached for Lots 23-28 and the survey attached for Lots 29-34 to establish the location of the existing structures).

Lots 29-34 were approved for a special exception for a bed and breakfast inn by Council Resolution number 16-09 which is attached as Exhibit B. So the resort use has already been approved for half of the Property. (Note that since the Subject Property is platted in the official plat books no boundary survey is required for the Subject Property).

Boulevard is a mixed-use district. The Subject Property is surrounded by streets on three sides: Estero Boulevard, School Street and Oak Street. On the 4th side over one-half of the property line

is adjacent to a parking lot and also adjacent to a 2-story single-family home that is located on Estero Boulevard. The lot line adjacent to the parking lot and 2-story unit should be deemed a side lot line for purposes of property development regulations. The Master Concept Plan proposes an adequate buffer adjacent to the single-family lot. There is high density multi-family, offices and institutional uses surrounding the property. The Boulevard designation recognizes that non-residential uses are appropriate and states that the non-residential uses including motels and churches comprise 49% of the land and that the percentage shall not exceed 70%.

The subject site is located in a predominantly institutional area directly adjacent to the Bay Oaks Community Pool, across Oak Street from Bay Oaks Recreation Center ballfields, and Fort Myers Beach Elementary School and across School Street from the Fort Myers Beach United Methodist Church and public library. The site fronts on Estero Boulevard where the Boulevard contains a number of mixed uses in the area. The resort units on the Subject Property are centered around a center courtyard, tiki and pool area which replicates a village concept.

During Special Exception SEZ2015-00006 for the bed and breakfast inn which was approved in 2016, the record noted that at that time a number of improvements made by the Applicant had done much to promote safety, order, appearance and prosperity of the property and generally improved the same for the neighborhood.

There are 12 existing dwelling units on the 1.03-acre parcel. This is a phased resort redevelopment. This will be a phased project as the owners need to keep the hospitality use in operation while constructing the proposed improvements as shown on the 4-page Master Concept Plan and would request an extended period for actual construction.

The existing resort is described as follows:

Building 1	1 unit	700 S.F.	
Building 2	2 units	924 S.F.	
Building 3	1 unit	700 S.F.	
Building 4	1 unit	1,030 S.F.	
Building 5	2 units	1,267 S.F.	Office 250 S.F.
Building 6	4 units	3,200 S.F.	
Building 7	1 unit	504 S.F.	

Phase 1 consists of four (4) sub-phases which may occur in different order:

Sub-phase A: move Building 2

Sub-phase B: build centralized parking area (gravel and wheel stops with controlled points of ingress/egress)

Sub-phase C: convert Building 3 to retail use

Sub-phase D: convert Building 1 to restaurant and add outdoor seating

Phase 2 is the addition of Building 8 - 1 1,600 square foot cottage which architecture will be substantially similar to Exhibit C. Upon completion of the phases, there will be 15 units, 700 S. F. retail, and 700 S. F. restaurant with 300 S. F. outdoor seating.

The parking area will provide for 32 parking spaces, over half will be from a unified parking lot area.

The proposed resort units are consistent with the platted overlay and the conversion table in LDC Section 34-1801.

The design concept provides for historic-type cottages on the site consistent with the original Fort Myers Beach resort community. The Master Concept Plan proposes five guest units of less than 450 S. F. and two guest units between 450 and 750 S.F. and six guest units over 750 S.F. The guest units are the equivalent of 8.3 dwelling units.

The amenity center contains an existing pool, recreational area and a tiki hut which will serve beverages including alcoholic beverages.

The schedule of uses includes all the permitted and special exception uses in the Commercial Resort District and the uses of "retail, small," "personal services" and "restaurant" which are appropriate for a resort and those uses are sized to be a subordinate use of the resort.

The request is consistent with the goals, objectives, policies and intent and the intensities of the Fort Myers Beach comprehensive plan. It is consistent with the existing and the planned uses in this area of the Boulevard designation.

The design concept provides for a variety of beach cottages on the site consistent with the original Fort Myers Beach community. The design of the cottages are consistent with the architectural style so familiar to Fort Myers Beach and will provide hospitality and family-oriented resort services. Attached as Exhibit C are photos of the proposed cottage architectural elevations and design.

The Town found that the request for the bed-and-breakfast contributed to a mixed-use environment without increasing the intensity of use beyond what is there today. The visitors brought to the area by the lodging use will provide additional customers to support nearby commercial uses such as those at Seagrape Plaza. Additionally, it was recognized that by renovating existing 1950s structures the Applicant has helped preserve the Island's cottage-style architecture and scale. This request furthers that goal.

We respectfully submit that this proposed Master Concept Plan is supported by the Community Design Element of the Comprehensive Plan. That Element provides a vision for this area "School Street itself has also become a key connection from the bay to the beach, a palm-line showcase of restored and new cottages. ..." Existing and new in-fill development on School Street is in the spirit and scale of the Beach's classic cottages. The Master Concept Plan and proposal also is consistent with Goal 3 of the Comprehensive Plan which accomplishes the goal: "to revitalize specific transitional neighborhood." The Subject Property lies within "Heart of the Island" area identified for redevelopment in Objective 3-A. Goal 4 of the Comprehensive Plan provides "to keep Fort Myers Beach a healthy and vibrant 'small town' while capitalizing on the vitality and amenities available in a beach resort environment ..." The scale and design of the proposed resort use is consistent with the Beach's small town feeling and capitalizes on this location which is in

close proximity to the beach, the Gulf, as gulf/beach access is less than a 1/4-mile to the north and Pompano Street is even closer to the south.

The urban services to serve this resort already exist and have been serving the existing dwelling units (bed and breakfast) that exist on the site. There are no environmental areas on the site. In the Boulevard designation it provides that a planned development rezoning is required for commercial uses so that appropriate conditions can be placed.

The design of the cottage resort concept is consistent with the harmony of this mixed-use neighborhood. The parking plan provides for back-out parking onto the low volume local streets. The physical scale of the proposed cottages structures are consistent and an asset to the neighborhood. This proposal provides a balance to the rather large institutional structures in proximity to the proposed structures shown on the Master Concept Plan. The enclosed elevations in Exhibit C illustrate the beach architecture which meets the design criteria set forth in the Commercial Design criteria in LDC 34-991. The proposed design consists of traditional building forms. To maintain the historic concept, the site design provides for parking in close proximity to the cottages which results in more access points from the local streets – School Street and Oak Street.

The layout of the Master Concept Plan creates usable outdoor space with a compatible style and scale that is an asset to the pedestrian traffic on the surrounding streets. The proposed design is an enhancement to the Town's plan for the Boulevard area and is consistent with Policy 4-C-3 of the Comprehensive Plan, which provides direction concerning commercial locations for new or expanded commercial uses. In the Boulevard category "proposals must be sensitive to nearby residential uses, compliment any adjoining commercial uses, contribute to the public realm as described in this Comprehensive Plan, and meet the design concepts of this Plan and the Land Development Code." The scale and beach cottage architecture is consistent with the Comprehensive Plan and furthers its goals.

The minor commercial square footage is limited to 700 square feet of retail and 1,000 square feet of restaurant (700' indoor, 300' outdoor). These commercial uses would typically be considered as permitted as subordinate commercial due to the minimal square footage. Although they are located along Estero Boulevard and available to pedestrian travelers for shopping and food and beverage service, they are such a small size and scale that they meet the definition of subordinate commercial. These uses would not be a destination-type use. Policy 4-C-3 provides "the neighborhood context of proposed commercial uses is of paramount importance." The proposed resort use that includes small level of retail, food and beverage service is an asset to the surrounding institutional and residential uses in the neighborhood and are sufficiently small in scope that they are a supportive and subordinate use. In Case SEZ2015-00006, it was recognized in 2015 that the property had been used for short-term rentals in excess of a decade at that time. Staff found that the proposed resort use in 2015 was consistent with the Comprehensive Plan and the Land Development Code. We respectfully submit that the Master Concept Plan presents a unified theme and design that continues with a historic cottage design that is compatible with the surrounding neighborhood and vision for Fort Myers Beach. Upon completion of Phase 2, the site will consist of 13 resort units with a supportive yet small amount of commercial (retail, and food and beverage service) to support the resort use.

Each sub-phase request is for three years to obtain a development order and four years to complete the development order.

The proposed location for this resort use is an enhancement to the existing uses surrounding the site.

Attachments:

- Exhibit 5-2 survey Lots 23-28; survey Lots 29-34 [previously provided]
- Future Land Use Map (Exhibit A) [previously provided]
- Town Council Resolution 16-09 (Exhibit B) [previously provided]
- Architectural elevations (3) (Exhibit C)

EXHIBIT

C
Architectural
Elevations







EXHIBIT 4-1 TO PART IV – Property Ownership
[Revised July 10, 2020]

Cottages at Myerside LLC

19-46-24-W3-0020C.0230, Lots 23 through 26

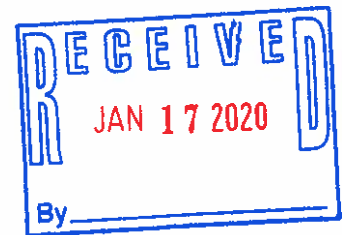
19-46-24-W3-0020C.0270, Lots 27 and 28

Myerside LLC

19-46-24-W3-0020C.0290, Lots 29 through 34

PROJECT NUMBER:

DATE:



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

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

Site Address: 2661-2681 ESTERO BLVD.; 125 SCHOOL ST.; 131-151 SCHOOL ST.

STRAP Number: 19-46-24-W3-0020C.0230; .0270; AND .0290

Applicant: MYERSIDE LLC

Phone: _____

Contact Name: _____

Phone: _____

Email: _____

Fax: _____

Current Zoning District: RESIDENTIAL CONSERVATION (RC)

Future Land Use Map (FLUM) Category: BOULEVARD

FLUM Density Range: MAX 10 DUPA

Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☒ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PROJECT NUMBER:

DATE:

PART I – General Information

A. Applicant*: MYERSIDE LLC Phone: _____

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

Applicant Mailing Address: c/o Roetzel & Address, Beverly Grady, 2320 First Street, Fort Myers, FL 33901

Email: bgrady@ralaw.com Fax: (239) 337-0970

Contact Name: Beverly Grady Phone: (239) 337-3850

B. Relationship of Applicant to subject property:

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

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

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

Name: ROETZEL & ADDRESS Phone: (239) 337-3850

Address: 2320 FIRST STREET, FORT MYERS, FL 33901

Email: BGRADY@RALAW.COM Fax: (239) 337-0970

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

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PROJECT NUMBER:

DATE:

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

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

PART III - Waivers

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

Code Section: FMB Section 34-212(6) Traffic Impact Statement

Description: Waiver from Traffic Impact Statement

Code Section: _____

Description: _____

Code Section: _____

PROJECT NUMBER:

DATE:

Description: _____

PART IV – Property Ownership

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

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

☐ Complete Disclosure of Interest Form (see below)

☒ Attach list of property owners as Exhibit 4-1

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

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

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 19-46-24-W3-0020C.0230; .0270; AND .0290

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

Name and Address

Percentage Ownership

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

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

PROJECT NUMBER:

DATE:

Name, Address and Office
COTTAGES AT MYERSIDE LLC

Percentage of Stock

ROLAND A. WEINMANN AND BEVERLEY A. MILLIGAN
WEINMANN RENTALS, INC.

50% EACH

ROLAND A. WEINMANN

51%

BEVERLEY A. MILLIGAN

49%

c/o 145 School St., Fort Myers Beach, FL 33931

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

Name and Address

Percentage of Interest

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

Name and Address

Percentage of Ownership

PROJECT NUMBER:

DATE:

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

Name, Address and Office

Percentage of Stock

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

Date of Contract:

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

Name

Address

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

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

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


Signature
MYERSIDE, LLC

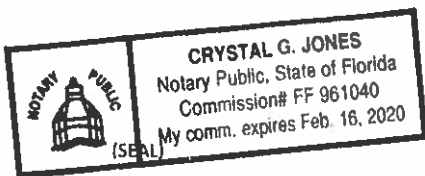

Printed Name
Roland Weimann
Its Manager

PROJECT NUMBER:

DATE:

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 6th day of January, 2020, by Roland Weimann.



Crystal G. Jones
Notary Public Signature

Crystal G. Jones
Notary Printed Name

Personally Known 1 or Produced Identification ✓

Type of Identification Produced: DLIC My Commission Expires: 02/16/2020

PART V - Property Information

A. Legal Description:

STRAP: 19-46-24-W3-0020C.0230; .0270; AND .0290

Property Address: 2661-2681 ESTERO BLVD., 125, 131-151 SCHOOL ST.

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

☒ Yes. Property identified in subdivision: WINKLER SUBDIVISION

Book: 8 Page: 45 Unit: Block: C Lot(s): 23-34

B. Boundary Survey:

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

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 150' feet

PROJECT NUMBER:

DATE:

Depth (please provide an average width if irregular in shape) 300' feet

Frontage on street: 150' feet. Frontage on waterbody: N/A feet

Total land area: 1.03 ☒ acres ☐ square feet

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

1.3 MILES SOUTH OF SKY BRIDGE

☒ Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

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

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

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

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

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

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

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

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

☐ Low Density

☐ Marina

☐ Mixed Residential

☐ Recreation

☒ Boulevard

☐ Wetlands

☐ Pedestrian Commercial

☐ Platted Overlay

H. Zoning (see official Zoning Map):

☐ RS (Residential Single-family)

☐ CF (Community Facilities)

☒ RC (Residential Conservation)

☐ IN (Institutional)

PROJECT NUMBER:

DATE:

PART VII

AFFIDAVIT

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

I, Roland Weinmann (name), as MANAGER (title) of MYERSIDE LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

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

MYERSIDE LLC

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

[Signature]
Signature

MANAGER

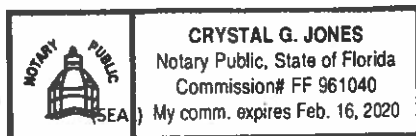
Title

Roland Weinmann
Typed or Printed Name

06/01/2020
Date

**STATE OF FLORIDA)
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this 16th day of January, 2020, by Roland Weinmann, as (title) owner/manager on behalf of (company name) MYERSIDE, LLC.



Crystal G Jones
Notary Public Signature

Crystal G Jones

Revised 1/6/2017

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

Page 11 of 15

PROJECT NUMBER:

DATE:

Notary Printed Name

Personally Known _____ or Produced Identification ✓

Type of Identification Produced: FL-DLIC My Commission Expires: 02/16/2020

AUTHORIZATION FOR APPLICANT AND FOR AGENT

I, Roland Weinmann as a Member of Cottages at Myerside, LLC and a property owner hereby authorize:

1. Myerside, LLC to be the applicant to rezone Lots 23 through 28, Plat Book 8, Page 45, Block C to Commercial Planned Development; and
2. Roetzel & Andress, LPA to be an authorized agent for this rezoning application.

COTTAGES AT MYERSIDE, LLC

By: [Signature]

Printed Name: Roland Weinmann

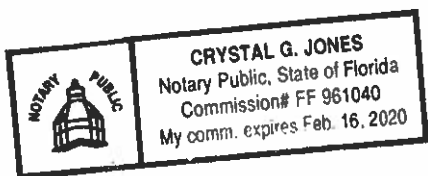
Title: Owner

STATE OF FLORIDA)
) §:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me by means of [☒] physical presence OR [☐] online notarization, this 6th day of January, 2020 by Roland Weinmann as Manager of COTTAGES AT MYERSIDE LLC, on behalf of the limited liability company. He/She is [☐] is personally known to me OR [☒] who produced FL-DLIC as identification.

[NOTARY STAMP/SEAL]

Crystal G. Jones
Notary Public
Commission Expiration: 02/16/2020



AUTHORIZATION FOR APPLICANT AND FOR AGENT

I, ROLAND A. WEINMANN, as President of WEINMANN RENTALS, INC. and a property owner hereby authorizes:

1. Myerside, LLC to be the applicant to rezone Lots 19 through 34, Plat Book 8, Page 45, Block C to Commercial Planned Development; and
2. Roetzel & Andress, LPA to be an authorized agent for this rezoning application.

WEINMANN RENTALS, INC.

By:

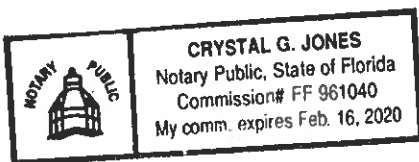
Roland A. Weinmann
Roland A. Weinmann, President

STATE OF FLORIDA)
) §:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me by means of ☒ physical presence OR ☐ online notarization, this 6th day of January, 2020 by Roland A. Weinmann, President of WEINMANN RENTALS, INC., on behalf of the corporation. He is ☐ is personally known to me OR ☒ who produced FL-DIC as identification.

[NOTARY STAMP/SEAL]

Crystal G. Jones
Notary Public
Commission Expiration: 02/16/2020



O'Brien, Robin

From: O'Brien, Robin <RObrien@ralaw.com>
Sent: Wednesday, January 15, 2020 11:40 AM
To: green@fmbgov.com
Cc: Grady, Beverly
Subject: Myerside Resort and Cottages
Attachments: 4690_001.pdf

Jason:

On behalf of Beverly Grady, attached please find an Application for Waiver of Submittal Requires in connection with Myerside Resort and Cottages for your review and approval.

If you have any questions, please contact our office.

Thank you for your attention to this matter.

Robin O'Brien

Assistant to Sean M. Ellis, Beverly Grady, and Ashley L. Suarez

 **ROETZEL**

2320 First Street, Suite 1000

Ft. Myers, FL 33901

Direct Phone No.: 239.338-4254

Main Phone No: 239.337.3850

Fax No.: 239.337.0970

Email: robrien@ralaw.com

www.ralaw.com

Roetzel & Andress, A Legal Professional Association

Both Robin O'Brien and Roetzel & Andress intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Robin O'Brien immediately at 239-338-4254. Thank you.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

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

Waiver is requested for items required for:

Public Hearing

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

Administrative Action

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

Name of Project: MYERSIDE RESORT AND COTTAGES

Applicant: MYERSIDE, LLC

Strap Number: 19-46-24-W3-0020C.0230; .0270; AND .0290

Street Address: 2661-2681 ESTERO BLVD.; 125 SCHOOL ST., 131-151 SCHOOL ST.

Phone Number: c/o Beverly Grady: (239) 338-4207

Email: c/o Beverly Grady: bgrady@ralaw.com



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
PART 2-Submittal Requirements	Traffic Impact Statement
(Supplement PH-D)	
Section 34-212 Application for Planned Development (6)	Traffic Impact Statement

Scope of project and reasons for request

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

SEE ATTACHED EXHIBIT A

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

Signature Beverly Spady

Date January 15, 2020

Signature

Date

Director's Decision ☐ Approved ☐ Denied

Comments:

Signature

Date

Revised 1/6/2017

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

Page 2 of 2

SUBMIT

EXHIBIT A TO WAIVER REQUEST

Pursuant to Section 34-202(a), the director is authorized to grant a waiver from a submittal requirement. This is a request for a waiver from providing a traffic impact statement. The Subject Property is currently developed - one-half of the Property has been approved bed-and-breakfast use pursuant to SEZ2015-00006, the other half of the Property has existing five (5) dwelling units. This application is requesting rezoning to CPD for a total of 15 guest units with a subordinate commercial uses of 600 s.f. retail and 600 s.f. of interior restaurant, and 300 s.f. of outdoor seating for the restaurant. The restaurant will be added as part of Phase 4 of the project. Therefore, the impact of the proposal is basically the equivalent of the existing density on the Property. Although the retail and restaurant will be open to the public, they are of such a size that their primary purpose is servicing the guest units and servicing pedestrian traffic. Due to the size of the proposed food and beverage service and retail service, these will not be destination locations. Therefore, there is no traffic impact statement needed for redevelopment that has the equivalency with the existing development.

EXHIBIT 4-1 TO PART IV – Property Ownership

Cottages at Myerside LLC

19-46-24-W3-0020C.0230, Lots 23 through 26

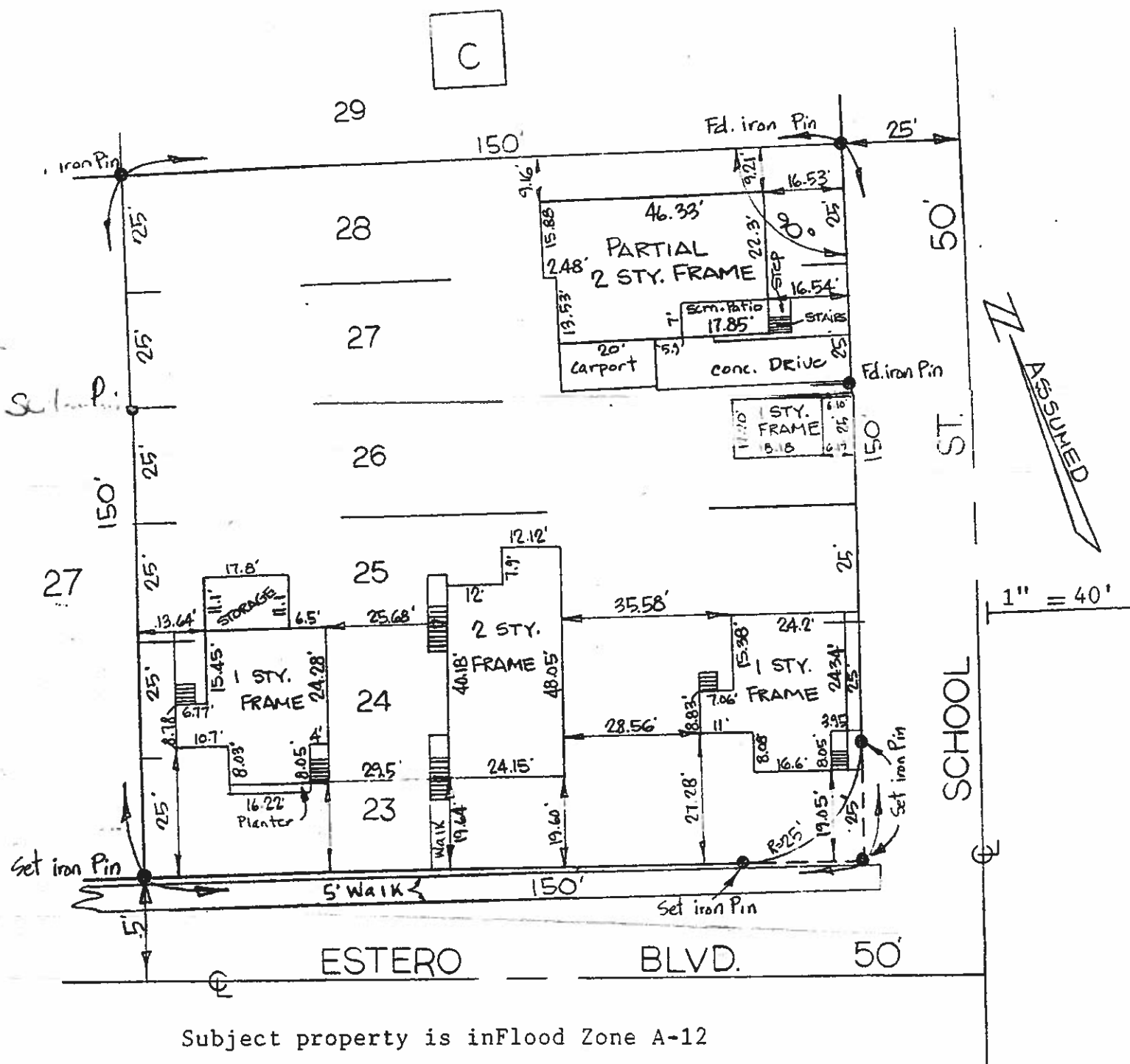
19-46-24-W3-0020C.0270, Lots 27 and 28

Weinmann Rentals, Inc.

19-46-24-W3-0020C.0290, Lots 29 through 34

GULF OF MEXICO

FIELDBOOK 203 PAGE 40 DATE 1/7/14		SECTION 19 TWP 46 S, RGE 24 E																							
NORTH ARROW 	FOUNDATION LOCATION	FIELDBOOK PAGE	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">LEGEND</th> </tr> <tr> <td style="width: 10px; text-align: center;">●</td> <td>SET CONC. MON. WCAP I.D. # 3553</td> </tr> <tr> <td style="text-align: center;">○</td> <td>FD CONC. MON. WCAP</td> </tr> <tr> <td style="text-align: center;">○</td> <td>FD CONC. MON.</td> </tr> <tr> <td style="text-align: center;">○</td> <td>FD IRON PIN</td> </tr> <tr> <td style="text-align: center;">○</td> <td>ASSUMED ELEVATION</td> </tr> <tr> <td style="text-align: center;">○</td> <td>BENCHMARK</td> </tr> <tr> <td style="text-align: center;">○</td> <td>RECORDED</td> </tr> <tr> <td style="text-align: center;">○</td> <td>MEASURED</td> </tr> <tr> <td colspan="2" style="text-align: center;">CONT REVERSE SIDE</td> </tr> <tr> <td colspan="2" style="text-align: center;">FINAL SURVEY DATE</td> </tr> </table>	LEGEND		●	SET CONC. MON. WCAP I.D. # 3553	○	FD CONC. MON. WCAP	○	FD CONC. MON.	○	FD IRON PIN	○	ASSUMED ELEVATION	○	BENCHMARK	○	RECORDED	○	MEASURED	CONT REVERSE SIDE		FINAL SURVEY DATE	
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FINAL SURVEY DATE																									
SCALE 1" = 30' LEGAL DESCRIPTION (AS PROVIDED BY CLIENT) This is a boundary survey of the following : Lots 29 through 34, Block C, Winkler Subdivision as recorded in Plat Book 8, Page 45 of the Public Records of Lee County, Florida. The property address is 131, 145, 147 & 151 School St. per County Records. ALL-STATE LEGAL® 5-2 2 PAGES																									
NOTES - REPRODUCTION OF THIS SKETCH IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL. - NO INSTRUMENTS OF RECORD REFLECTING EASEMENTS, RIGHTS-OF-WAY, AND OR OWNERSHIP WERE FURNISHED THIS SURVEYOR EXCEPT AS SHOWN. - NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED. - BEARINGS SHOWN HEREON ARE BASED ON <u>Angles are field measured</u> - THIS PROPERTY LIES IN FLOOD ZONE AE EL 12 & 13 NAVD88 PER F.I.R.M. PANEL NO. 12071C0554F, DATED 8/28/2008 - LAST DATE OF FIELDWORK 1/7/14 - ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF		CERTIFICATE I hereby certify that the above described property was surveyed under my direction and the sketch of survey is true and correct to the best of my knowledge. This survey meets or exceeds the minimum technical standards set forth by the Florida Board of Land Surveyors, pursuant to Rule 61G17 - 6 Florida Administrative Code, and pursuant to Section 472.027 Florida Statute. There are no visible encroachments other than those shown hereon. P.L.S. MARK O. ALLEN P.L.S. #3553 LB #6558																							
MARK O. ALLEN, INC. PROFESSIONAL LAND SURVEYOR																									
FAX: (239) 992-6070 TELE: (239) 992-8900		10602 WOODS CIRCLE BONITA SPRINGS, FL 34135																							
OWN BY MG	CHK'D BY	ORDERED BY Beverly Milligan	SHEET 1 OF 1 DWG NO. 2014-3																						



SURVEY PLAT

For Lots 23-24-25-26-27-28, Block "C" WINKLER Subdivision as recorded in Plat Book 8 Page 45. Public Records of Lee County, Florida.

FOR: Donald Nyman

BY: S & H Land Survey Co.
7218 Drake Drive SW
Ft. Myers, Florida 33908

CERTIFICATE OF SURVEY: I hereby certify that the plat hereon meets the minimum technical standards set forth by the Florida Board of Land Surveyors, pursuant to Section 472.027, Florida Statutes

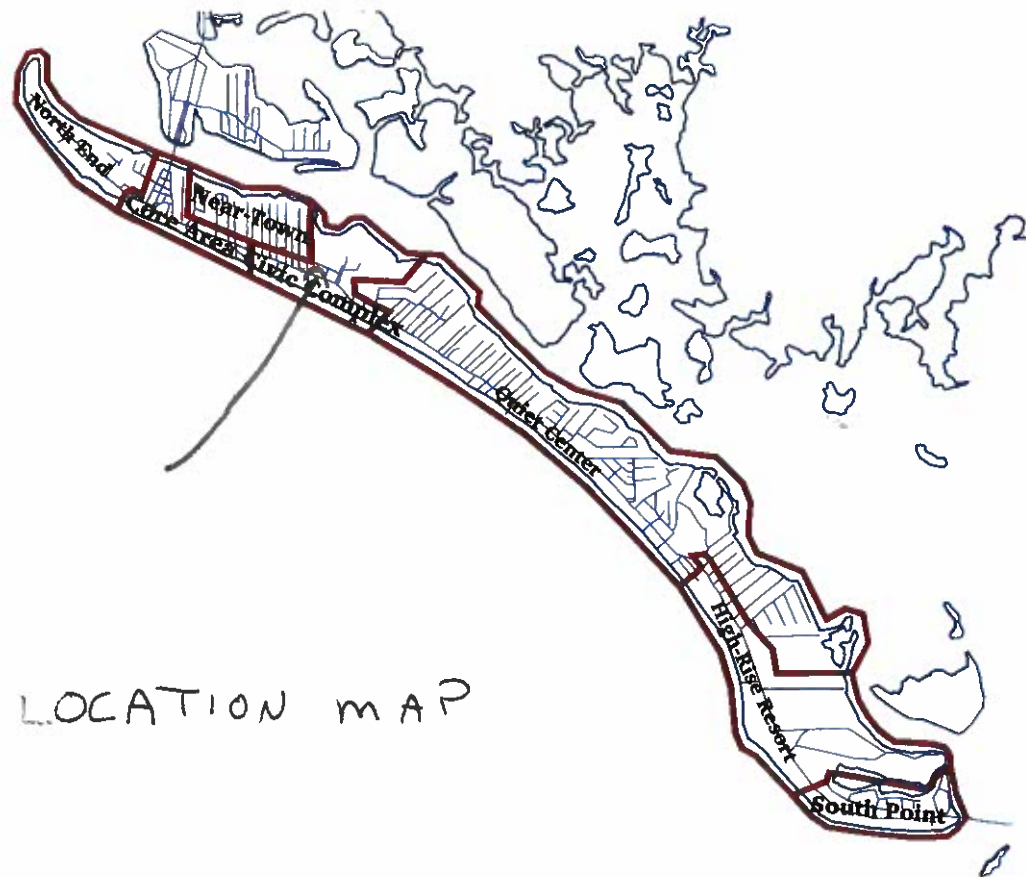
DATE: May 21, 1987

Richard L. Hardy
Reg. Land Surveyor #3135
State of Florida

2661-26671-2681 Estero Blvd. & 125 School St.

JOB 6208-A Boundary -Location

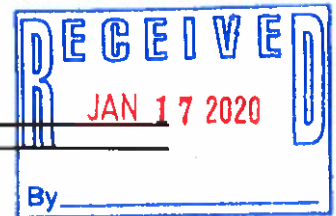
Richard L. Hardy



LOCATION MAP

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

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

Project Name: MYERSIDE RESORT AND COTTAGES
Authorized Applicant: MYERSIDE LLC
STRAP Number(s): 19-46-24-W3-0020C.0230; 19-46-24-W3-00200C.0270; AND 19-46-24-W3-0020C.0290

Current Property Status:
Current Zoning: RC
Future Land Use Map (FLUM) Category: BOULEVARD
Platted Overlay? ☒ yes ☐ no FLUM Density Range:

Requested Action:

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

PART I
Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒ There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.

☐ The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)

B. Phasing of Construction

[illegible]

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

C. Comprehensive Plan Compliance.

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

SEE ATTACHED NARRATIVE

D. Design Standards Compliance

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

SEE ATTACHED NARRATIVE

E. Decision-making Compliance

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

[illegible]

F. Schedule of deviations and written justification

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

[illegible]

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

G. Administrative amendments to approved Master Concept Plan

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

N/A

PART 2 Submittal Requirements

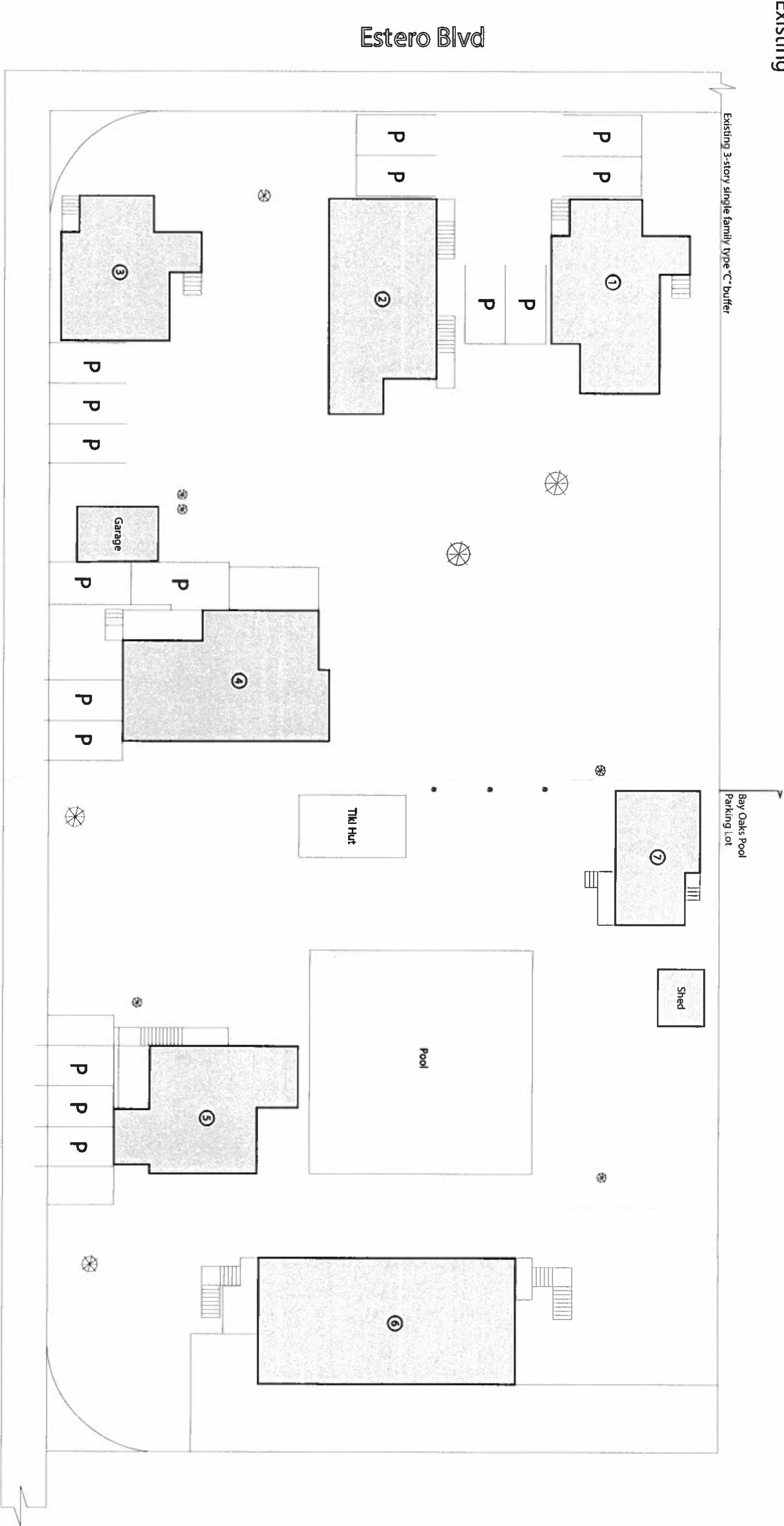
All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
Architectural Elevations
Schedule of Uses

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

Master Concept Plan
Myerside Resort and Cottages
Existing



School St

Estero Blvd

Existing 3-story single family type "C" buffer

Bay Oaks Pool
Parking lot

Existing

P

Existing structure
Parking space

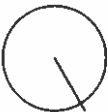


Tree

Max. height - 30'
Dwelling units - 13
Max. FAR - 1.2
24 parking spaces

Building Details Legend

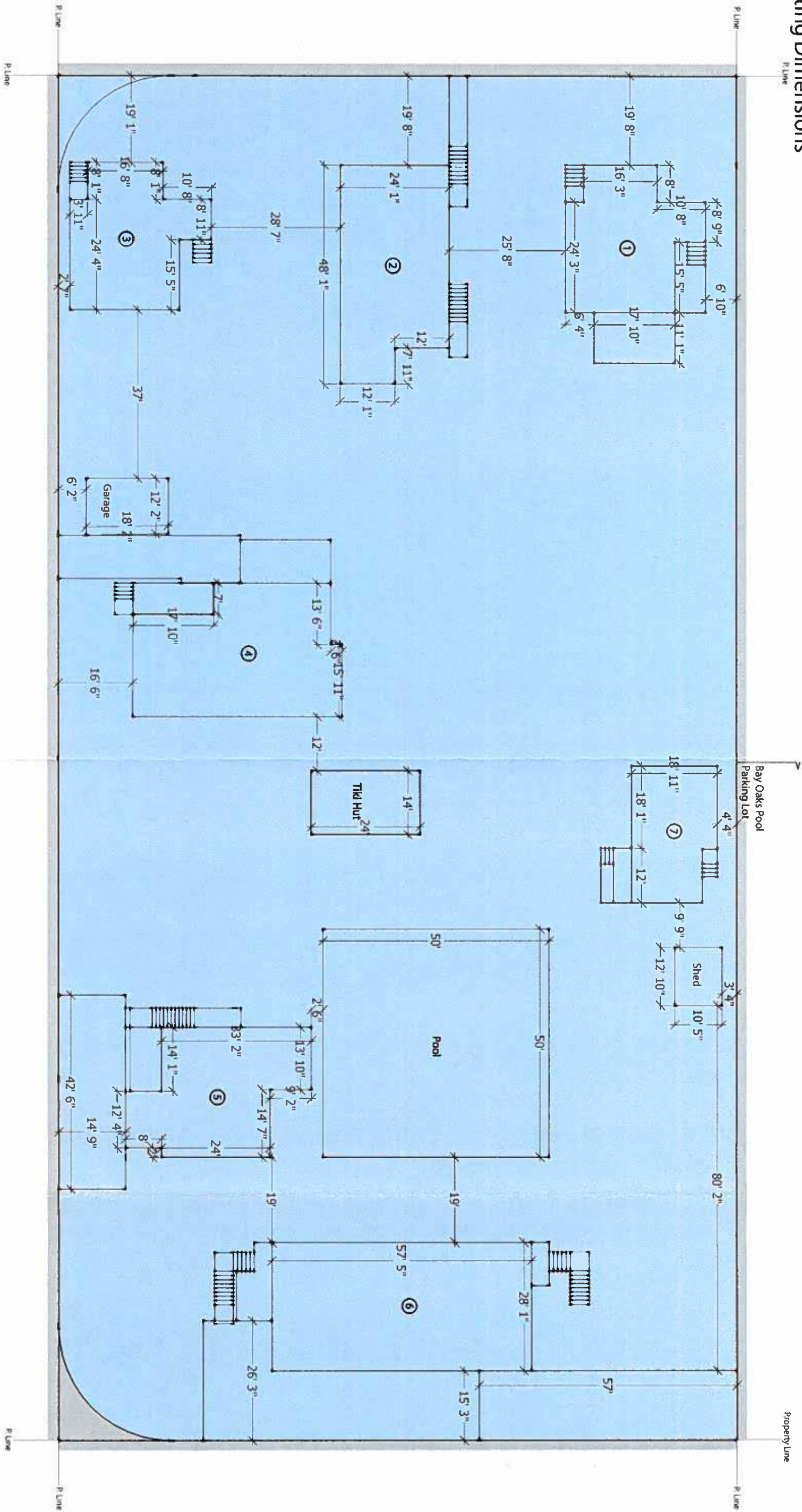
- ① One story, one unit, 700 sq/ft
- ② Two stories, three units, 950 sq/ft
- ③ One story, one unit, 700 sq/ft
- ④ Partial two story, two unit, 900 sq/ft
- ⑤ Two stories, two units + office, 1200 sq/ft
- ⑥ Two stories, four units, 1600 sq/ft
- ⑦ One story, one unit, 510 sq/ft



5' 10' 20'

Sheet
1/8

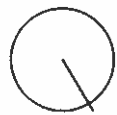
Master Concept Plan
Myerside Resort and Cottages
Existing Dimensions



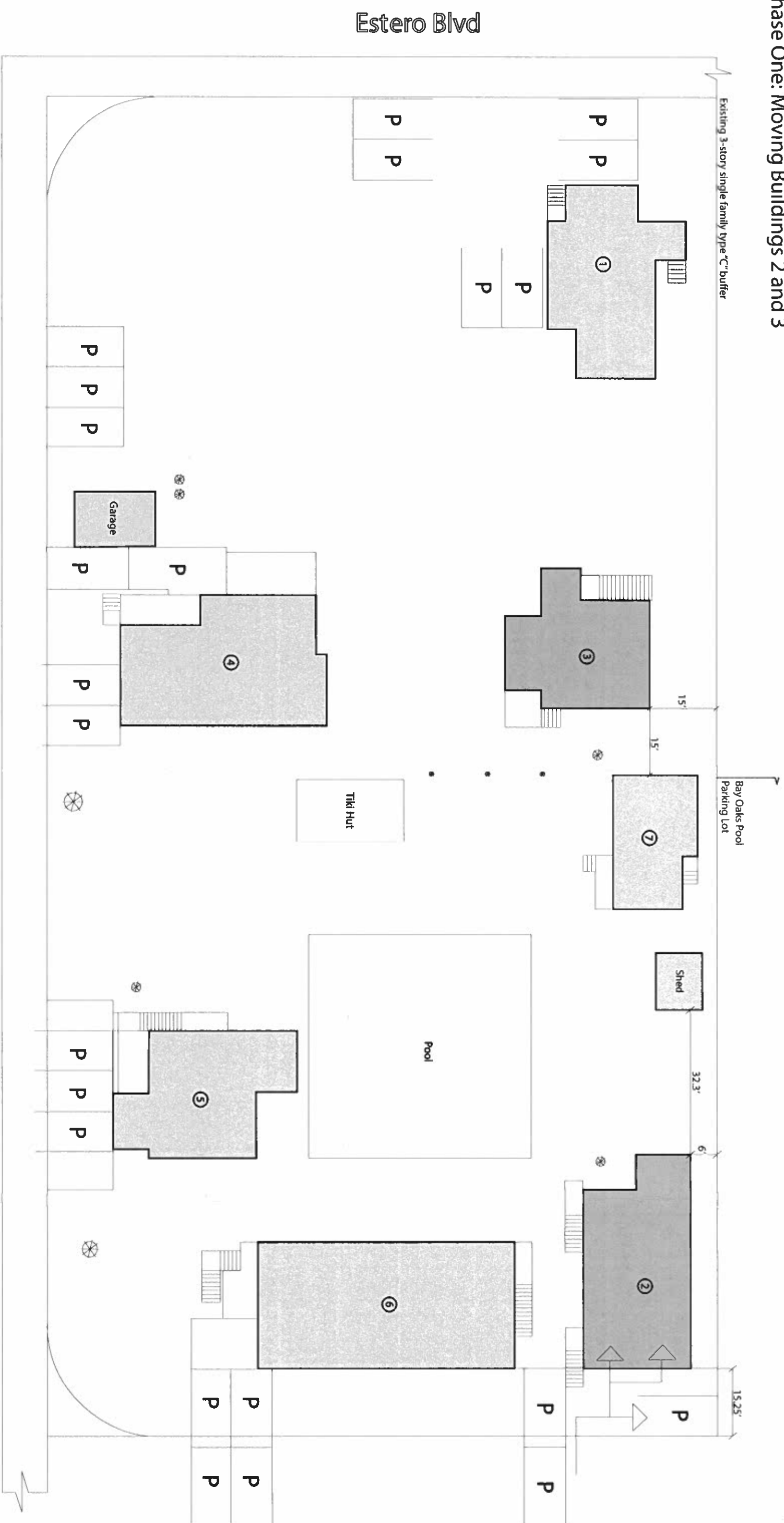
Structure Details Legend

- ① One story, one unit, 700 sq/ft
- ② Two stories, three units, 950 sq/ft
- ③ One story, one unit, 700 sq/ft
- ④ Partial two story, two unit, 900 sq/ft
- ⑤ Two stories, two units + office, 1200 sq/ft
- ⑥ Two stories, four units, 1600 sq/ft
- ⑦ One story, one unit, 510 sq/ft

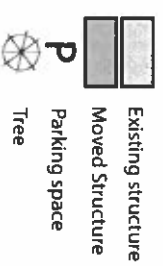
Existing Dimensions



Master Concept Plan Myerside Resort and Cottages Phase One: Moving Buildings 2 and 3



Phase one: move existing structures 2 and 3

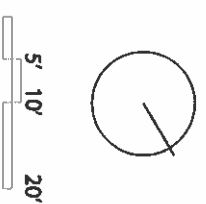


Max. height - 30'
Guest units - 13
Max. FAR - 1.2
25 parking spaces

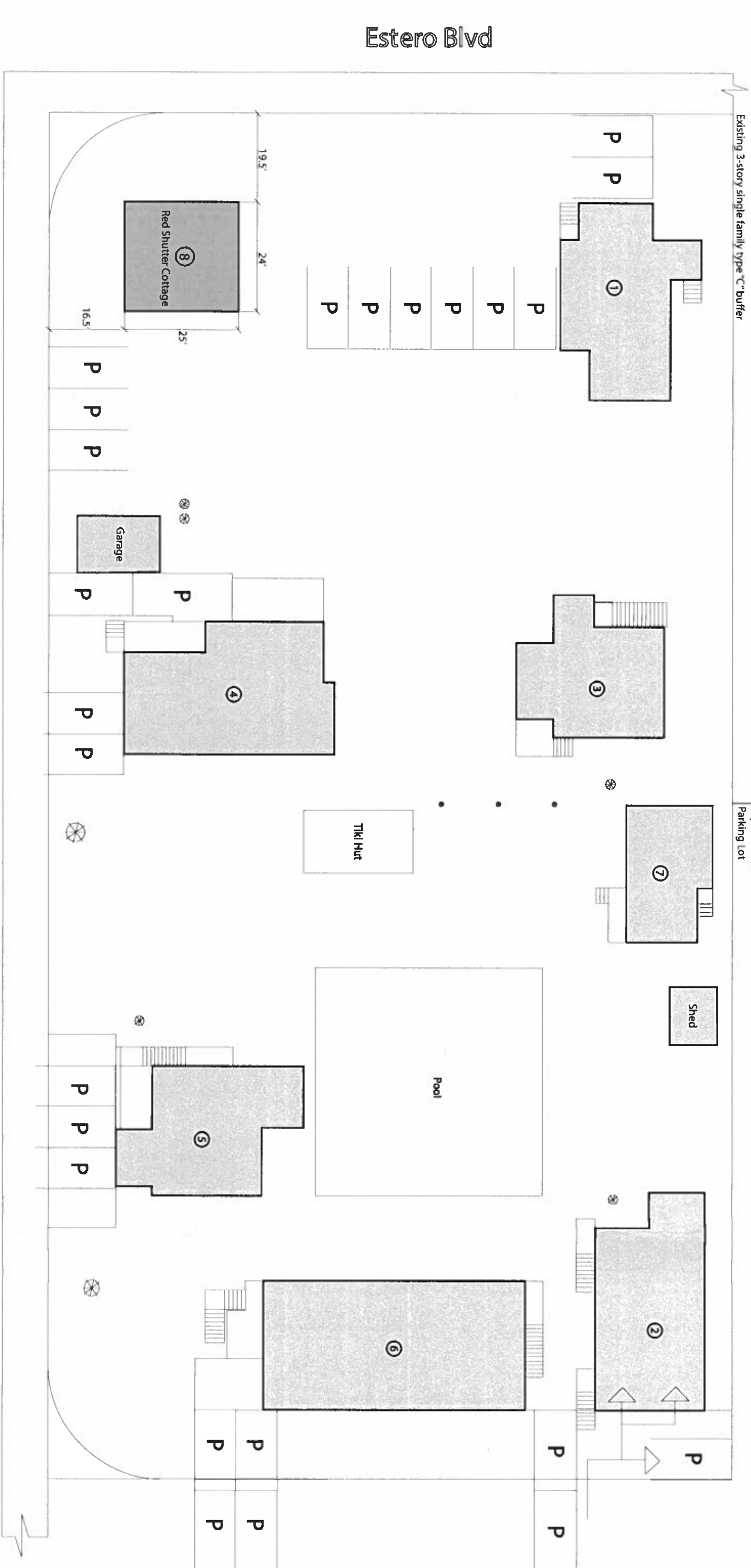
School St

Structure Details Legend

- ① One story, one unit, 700 sq/ft
- ② Two stories, three units, 950 sq/ft
- ③ One story, one unit, 700 sq/ft
- ④ Partial two story, two unit, 900 sq/ft
- ⑤ Two stories, two units + office, 1200 sq/ft
- ⑥ Two stories, four units, 1600 sq/ft
- ⑦ One story, one unit, 510 sq/ft

Sheet
3/8

Master Concept Plan
Myerside Resort and Cottages
Phase Two: Relocate Red Shutter Cottage and Remodel



School St

Structure Details Legend

- ① One story, one unit, 700 sq/ft
- ② Two stories, three units, 950 sq/ft
- ③ One story, one unit, 700 sq/ft
- ④ Partial two story, two unit, 900 sq/ft
- ⑤ Two stories, two units + office, 1200 sq/ft
- ⑥ Two stories, four units, 1600 sq/ft
- ⑦ One story, one unit, 5 10 sq/ft



5' 10' 20'

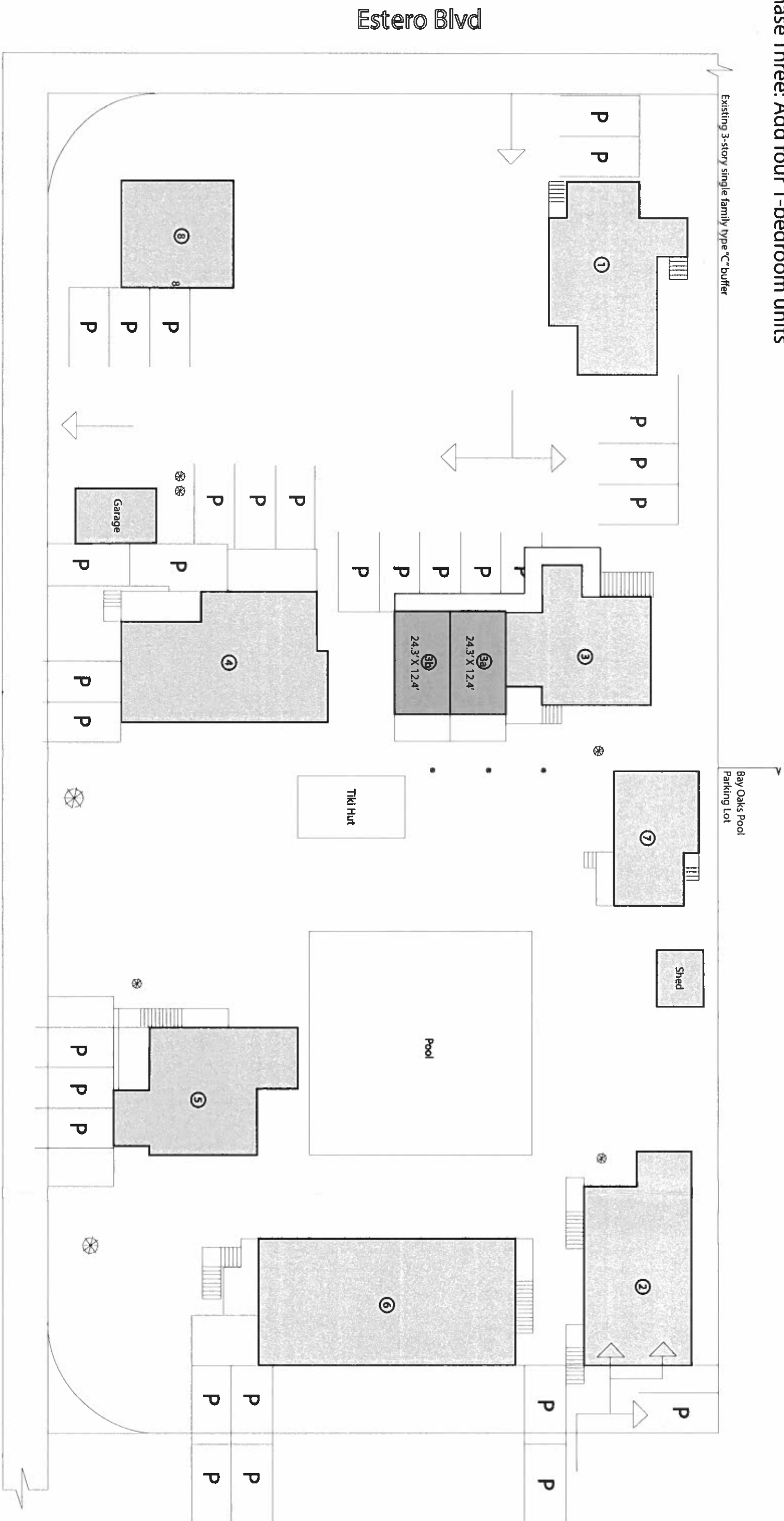
Phase two: add red shutter cottage

- Existing structure
- Moved/new structure
- Parking space
- ⑧ Retail, 2 story, 600 sq/ft
- Tree

Max. height - 30'
Guest units - 13
Max. FAR - 1.2
27 parking spaces

Sheet
4/8

Master Concept Plan
Myerside Resort and Cottages
Phase Three: Add four 1-bedroom units



School St

Estero Blvd

Existing 3-story single family type "C" buffer

Bay Oaks Pool
Parking Lot

Shed

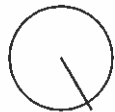
Pool

Tiki Hut

Garage

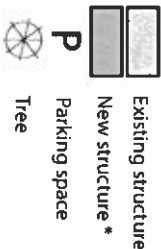
Structure Details Legend

- | | |
|---------------------------------------|---|
| ① One story, one unit, 700 sq/ft | ④ Partial two story, two unit, 900 sq/ft |
| ② Two stories, three units, 950 sq/ft | ⑤ Two stories, two units + office, 1200 sq/ft |
| ③ One story, one unit, 700 sq/ft | ⑥ Two stories, four units, 1600 sq/ft |
| *③⑨ Two story, two unit, 600 sq/ft | ⑦ One story, one unit, 510 sq/ft |
| *⑤⑨ Two story, two unit, 600 sq/ft | ⑧ One story, retail unit, 600 sq/ft |



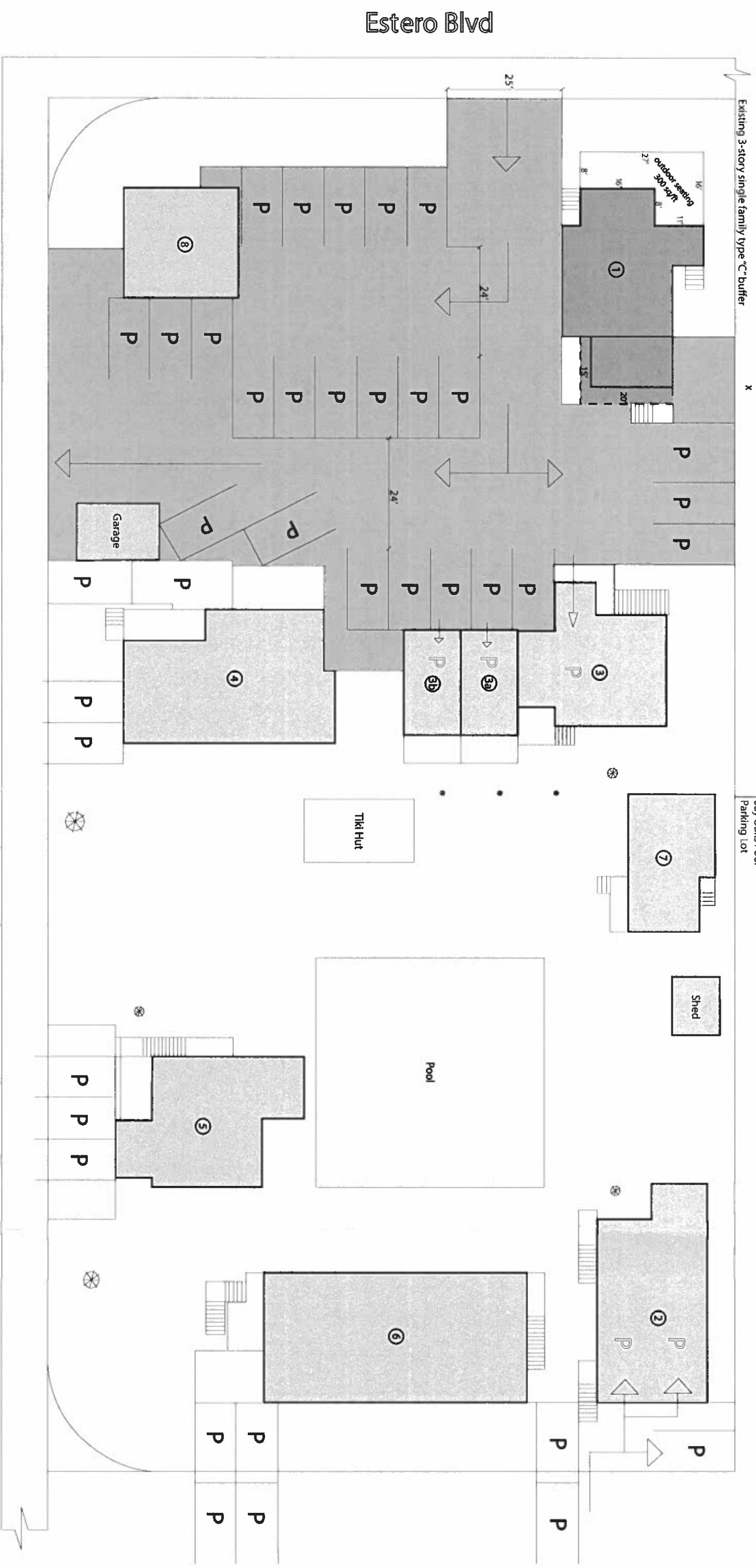
5' 10' 20'

Phase three: add four 1-bedroom
units to structure 3



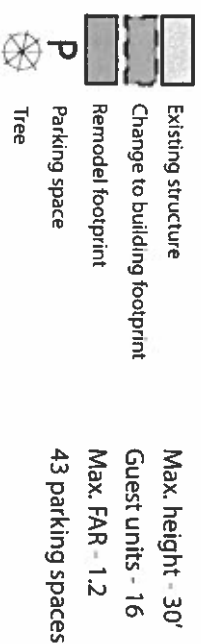
Sheet
5/8

Master Concept Plan
Myerside Resort and Cottages
Phase Four: Remodel and Create Restaurant in Building 1
Create Additional Parking



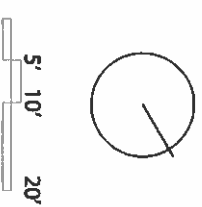
School St

Phase four: add 100 sq/ft* to building 1 and formalize parking

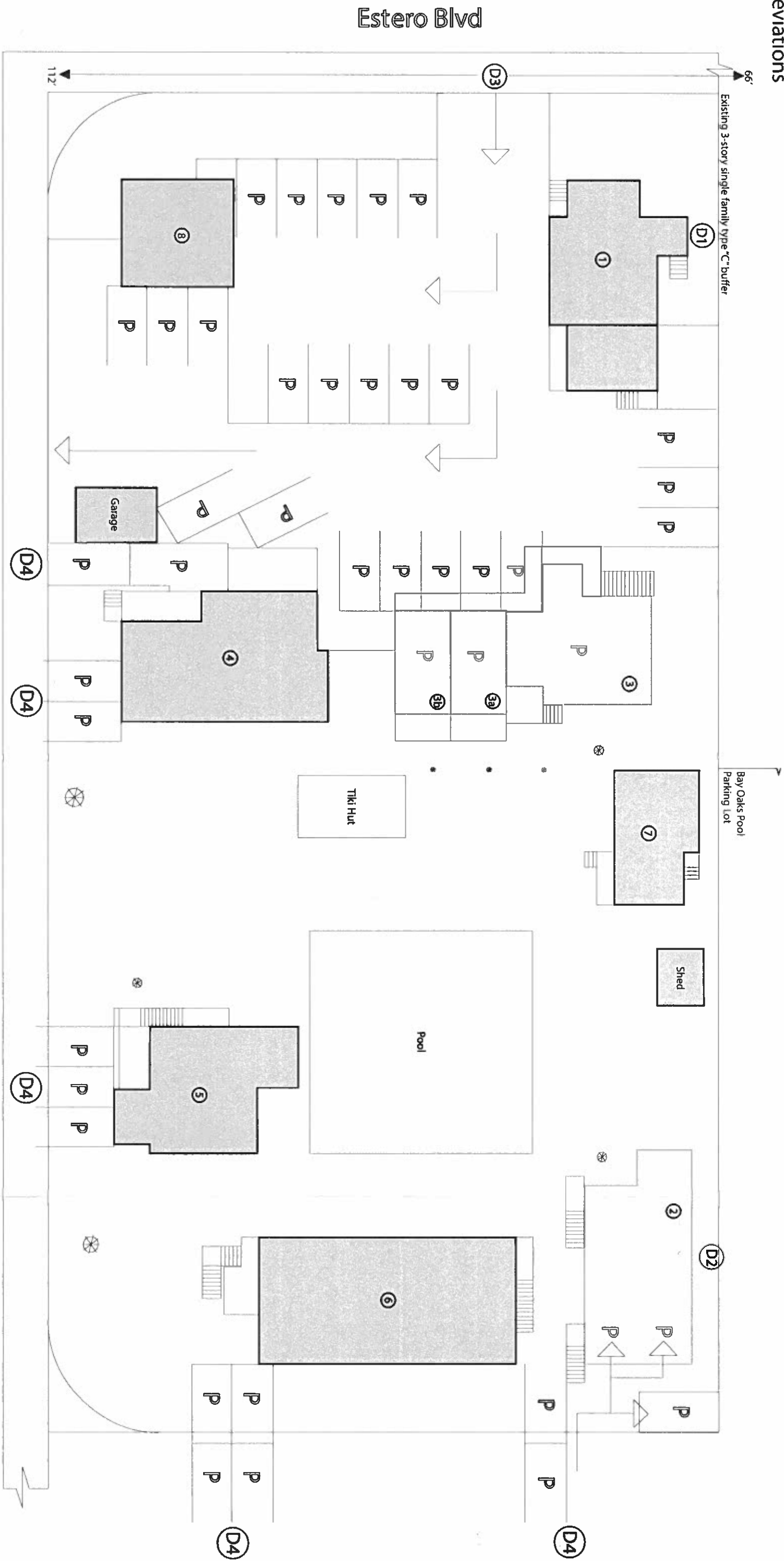


Structure Details Legend

- ① One story, one unit, 800⁰ sq/ft, 700+100
- ② Two stories, three units, 950 sq/ft
- ③ One story, one unit, 700 sq/ft
- ④ Partial two story, two unit, 900 sq/ft
- ⑤ Two stories, two units + office, 1200 sq/ft
- ⑥ Two stories, four units, 1600 sq/ft
- ⑦ One story, one unit, 510 sq/ft
- ⑧ One story, retail unit, 600 sq/ft
- ⑨ Two story, two unit, 600 sq/ft
- ⑩ Two story, two unit, 600 sq/ft

Sheet
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Master Concept Plan
Myerside Resort and Cottages
Deviations



- Deviations**
- D1 Existing building 1 - deviation of setback from 15' to 6.9'
 - D2 Move of building 2 - deviation of setback from 15' to 6'
 - D3 Deviation of driveway access separation of 66' to north and 112' to south
 - D4 Deviation to allow back-out parking



Existing structure



Existing raised structure above parking



Parking space



Tree

Max. height - 30'

Guest units - 16

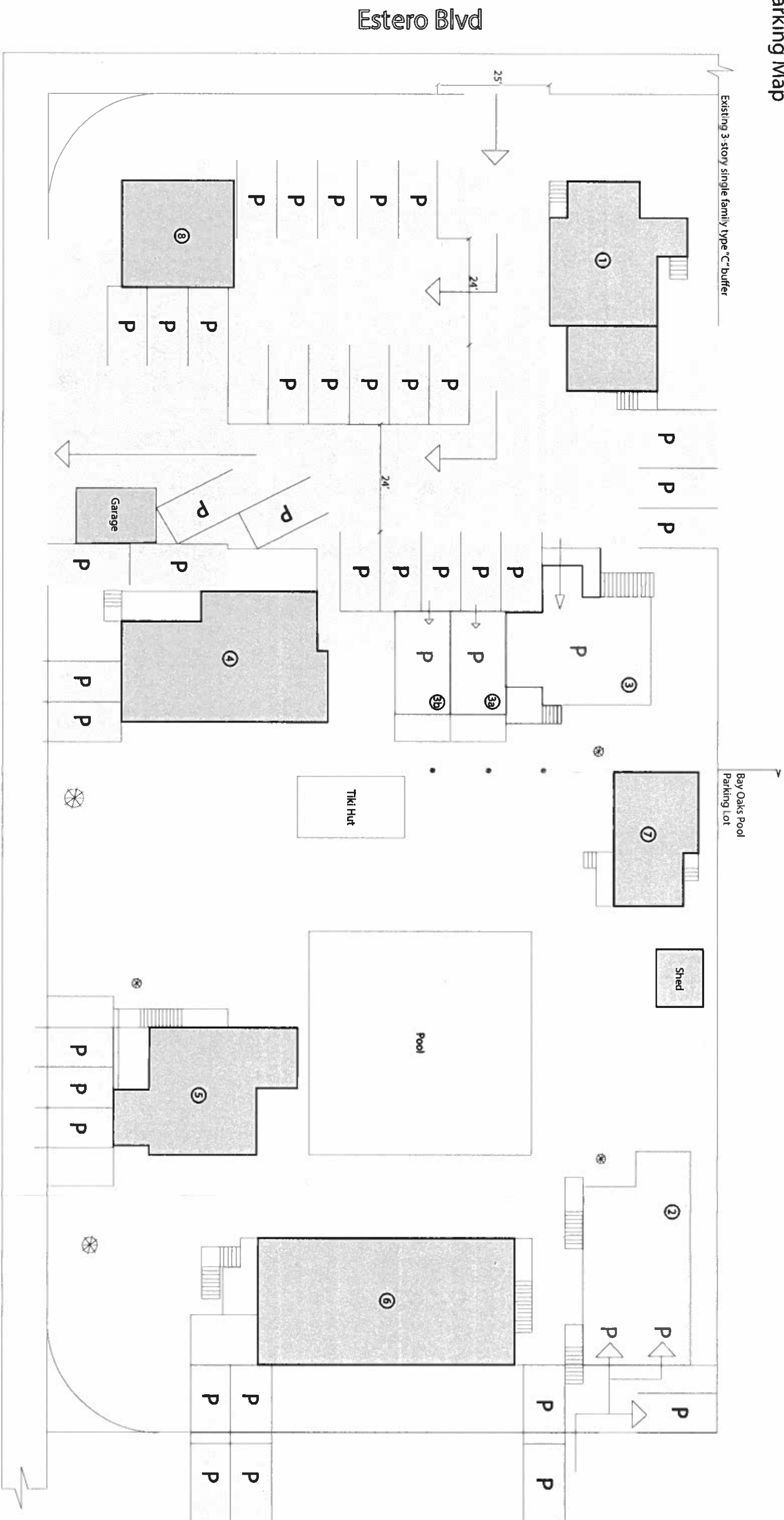
Max. FAR - 1.2

43 parking spaces

- Structure Details Legend**
- 1 One story, one unit, 700 sq/ft
 - 2 Two stories, three units, 950 sq/ft
 - 3 One story, one unit, 700 sq/ft
 - 3a Two story, two unit, 600 sq/ft
 - 3b Two story, two unit, 600 sq/ft
 - 4 Partial two story, two unit, 900 sq/ft
 - 5 Two stories, two units + office, 1200 sq/ft
 - 6 Two stories, four units, 1600 sq/ft
 - 7 One story, one unit, 510 sq/ft
 - 8 One story, retail unit, 600 sq/ft



Master Concept Plan
Myerside Resort and Cottages
Parking Map



School St

Estero Blvd

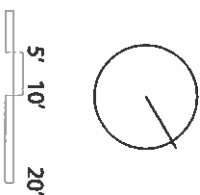
Parking layout and access map

- Existing structure
- Raised structure above parking
- Parking Pad
- Parking space
- Tree

- Max. height - 30'
- Guest units - 16
- Max. FAR - 1.2
- 43 parking spaces

Structure Details Legend

- ① One story, one unit, 700 sq/ft
- ② Two stories, three units, 950 sq/ft
- ③ One story, one unit, 700 sq/ft
- ③a Two story, two unit, 600 sq/ft
- ③b Two story, two unit, 600 sq/ft
- ④ Partial two story, two unit, 900 sq/ft
- ⑤ Two stories, two units + office, 1200 sq/ft
- ⑥ Two stories, four units, 1600 sq/ft
- ⑦ One story, one unit, 510 sq/ft
- ⑧ One story, retail unit, 600 sq/ft



Sheet
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Deviation 4:

A deviation from Section 34-2015, location and design of parking to include allowance of stacking of cars where designated on the Master Concept Plan; to allow an exiting vehicle to leave parking spaces by backing out onto School Street or Oak Street; and elimination of turning bay for dead-end aisles, and from Section 34-2016, the dimension requirements to allow appropriate dimensions for parking of compact cars.

Justification: Deviation 4 is a request for relief from LDC Section 34-2015 to accomplish the village design. The parking plan includes back-out parking, parking along the west property side line; stacked parking; and elimination of turning bays at dead-end aisles. In addition, this request is for relief from Section 34-2016, the dimensional requirements to allow parking spaces to be reduced to provide parking to compact cars. This parking plan actually provides parking beyond the minimum Code requirement for number of spaces for resort use pursuant Section 34-2020. The parking will be operated by management so that vehicles parking under Buildings where the stacked parking will be carefully managed for those who are not moving their vehicle for a set period of time. The back-out parking is proposed in three areas on School Street and two areas on Oak Street, which are local roads with minimal traffic. The parking arrangement supports the village concept design in that having parking close to the cottages where the vehicles are kept on the perimeter so that the focus of the resort is the courtyard area with the surrounding resort cottages. The subordinate commercial of the 600 square foot of retail in Unit 8 and the food and beverage and outdoor seating (Phase 4 only) in Building 1 have parking provided. Parking is proximate to each cottage to include Buildings 2, 3, 4, 5 and 6, which is typical type parking use for cottages on Fort Myers Beach.

EXHIBIT TO SUPPLEMENT PH-D

Schedule of Uses

Dwelling unit, single or 2-unit or multi-family
Bed and breakfast
Hotel / motel
Guest units
Rental of any permitted unit for periods of one day or longer
Resort
Accessory apartment
Residential accessory uses
On-premises consumption of alcoholic beverages
Resort accessory use
Personal services
Subordinate commercial uses
Recreational facilities
Retail store, small
Restaurant

Property Development Regulations

Street setback 10 feet
Side setback 15 feet
Height maximum 30 feet per Section 34-631, maximum 3 stories
Minimum lot size 4,000 square feet
Minimum lot width 45 feet
Minimum lot depth 80 feet

COPY

ALL-STATE LEGAL®

3-1

O'Brien, Robin

From: O'Brien, Robin <RObrien@ralaw.com>
Sent: Wednesday, January 15, 2020 11:40 AM
To: green@fmbgov.com
Cc: Grady, Beverly
Subject: Myerside Resort and Cottages
Attachments: 4690_001.pdf

Jason:

On behalf of Beverly Grady, attached please find an Application for Waiver of Submittal Requires in connection with Myerside Resort and Cottages for your review and approval.

If you have any questions, please contact our office.

Thank you for your attention to this matter.

Robin O'Brien

Assistant to Sean M. Ellis, Beverly Grady, and Ashley L. Suarez

 ROETZEL

2320 First Street, Suite 1000

Ft. Myers, FL 33901

Direct Phone No.: 239.338-4254

Main Phone No: 239.337.3850

Fax No.: 239.337.0970

Email: robrien@ralaw.com

www.ralaw.com

Roetzel & Andress, A Legal Professional Association

Both Robin O'Brien and Roetzel & Andress intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Robin O'Brien immediately at 239-338-4254. Thank you.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

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

Waiver is requested for items required for:

Public Hearing

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

Administrative Action

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

Name of Project: MYERSIDE RESORT AND COTTAGES

Applicant: MYERSIDE, LLC

Strap Number: 19-46-24-W3-0020C.0230; .0270; AND .0290

Street Address: 2661-2681 ESTERO BLVD.; 125 SCHOOL ST., 131-151 SCHOOL ST.

Phone Number: c/o Beverly Grady: (239) 338-4207

Email: c/o Beverly Grady: bgrady@ralaw.com



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
PART 2-Submittal Requirements	Traffic Impact Statement
(Supplement PH-D)	
Section 34-212 Application for Planned Development (6)	Traffic Impact Statement

Scope of project and reasons for request

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

SEE ATTACHED EXHIBIT A

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

Beverly Chasdy

Signature

January 15, 2020

Date

Director's Decision ☐ Approved ☐ Denied

Comments:

Signature

Date

Revised 1/6/2017

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

Page 2 of 2

SUBMIT

EXHIBIT A TO WAIVER REQUEST

Pursuant to Section 34-202(a), the director is authorized to grant a waiver from a submittal requirement. This is a request for a waiver from providing a traffic impact statement. The Subject Property is currently developed - one-half of the Property has been approved bed-and-breakfast use pursuant to SEZ2015-00006, the other half of the Property has existing five (5) dwelling units. This application is requesting rezoning to CPD for a total of 15 guest units with a subordinate commercial uses of 600 s.f. retail and 600 s.f. of interior restaurant, and 300 s.f. of outdoor seating for the restaurant. The restaurant will be added as part of Phase 4 of the project. Therefore, the impact of the proposal is basically the equivalent of the existing density on the Property. Although the retail and restaurant will be open to the public, they are of such a size that their primary purpose is servicing the guest units and servicing pedestrian traffic. Due to the size of the proposed food and beverage service and retail service, these will not be destination locations. Therefore, there is no traffic impact statement needed for redevelopment that has the equivalency with the existing development.

MYERSIDE RESORT AND COTTAGES NARRATIVE
SUPPORTING CONSISTENCY WITH FORT MYERS BEACH COMPREHENSIVE PLAN,
CRITERIA FOR REZONING LDC 34-85; DESIGN GUIDELINES.

This is a request to rezone Lots 23-34, Block C, Winklers Subdivision from RC to Commercial Planned Development (CPD) for a resort community (Subject Property) Myerside Resort and Cottages. The Subject Property is located at 2662-2681 Estero Boulevard, 125 and 131-151 School Street – 3 contiguous parcels. The Subject Property is designated as Boulevard in the Future Land Use Map attached as Exhibit A which is defined as follows:

POLICY 4-B-5 “BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overly” indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

The Subject Property consists of 3 strap numbers and is located within the platted overlay which permits 10 dwelling units to the acre and requests a rezoning to CPD. Lots 23-28 are currently owned by Cottages at Myerside LLC and that parcel contains 5 structures with 5 dwelling units. Lots 29-34 are currently owned by Weinman Realty LLC and that parcel contains 3 structures with 7 dwelling units. Although the official plat is sufficient for the legal description and boundary of the Subject Property, please find Exhibit 5-2 the survey attached for Lots 23-28 and the survey attached for Lots 29-34 to establish the location of the existing structures).

Lots 29-34 were approved for a special exception for a bed and breakfast inn by Council Resolution number 16-09 which is attached as Exhibit B. So the resort use has already been approved for half of the Property. (Note that since the Subject Property is platted in the official plat books no boundary survey is required for the Subject Property).

Boulevard is a mixed-use district. The Subject Property is surrounded by streets on three sides: Estero Boulevard, School Street and Oak Street. On the 4th side over one-half of the property line is adjacent to a parking lot and also adjacent to a 2-story single-family home that is located on Estero Boulevard. The lot line adjacent to the parking lot and 2-story unit should be deemed a side

lot line for purposes of property development regulations. The Master Concept Plan proposes an adequate buffer adjacent to the single-family lot. There is high density multi-family, offices and institutional uses surrounding the property. The Boulevard designation recognizes that non-residential uses are appropriate and states that the non-residential uses including motels and churches comprise 49% of the land and that the percentage shall not exceed 70%.

The subject site is located in a predominantly institutional area directly adjacent to the Bay Oaks Community Pool, across Oak Street from Bay Oaks Recreation Center ballfields, and Fort Myers Beach Elementary School and across School Street from the Fort Myers Beach United Methodist Church and public library. The site fronts on Estero Boulevard where the Boulevard contains a number of mixed uses in the area. The resort units on the Subject Property are centered around a center courtyard, tiki and pool area which replicates a village concept.

During Special Exception SEZ2015-00006 for the bed and breakfast inn which was approved in 2016, the record noted that at that time a number of improvements made by the Applicant had done much to promote safety, order, appearance and prosperity of the property and generally improved the same for the neighborhood.

There are 12 existing dwelling units on the 1.03-acre parcel. This is a phased resort redevelopment. This will be a phased project as the owners need to keep the hospitality use in operation while constructing the proposed improvements as shown on the 8-page Master Concept Plan and would request an extended period for actual construction.

Phase 1 proposes 12 guest units and the proposed size of the guest units are as follows:

Building 1	1 unit	700 S.F.	
Building 2	2 units	924 S.F.	
Building 3	1 unit	700 S.F.	
Building 4	1 unit	1,030 S.F.	
Building 5	2 units	1,267 S.F.	Office 250 S.F.
Building 6	4 units	3,200 S.F.	
Building 7	1 unit	504 S.F.	

Buildings 2 and 3 are relocated in Phase 1 to place the resort units around the amenity area.

Phase 2 also proposes 12 guest units and adds Building 8, which is 600 square feet of retail. This is an existing building to be relocated known as the Red Shutter Cottage, which will add to the Fort Myers Beach village ambiance and concept.

Phase 3 adds 4 new guest units labeled as 3a - 600 square feet, and 3b - 600 square feet for a total of 16 guest units. The parking is revised in this Phase so that there is only ingress from Estero Boulevard access point with egress onto School Street. There is no egress onto Estero Boulevard.

Phase 4 adds 100 interior square feet to Building 1 and adds 300 square feet of outdoor seating to Building 1. The square footage devoted to interior food and beverage service is 900 square feet.

Phase 4 revises the parking to provide for 42 parking spaces, over half will be from a unified parking lot area.

The proposed guest units are consistent with the platted overlay and the conversion table in LDC Section 34-1801.

The design concept provides for historic-type cottages on the site consistent with the original Fort Myers Beach resort community. The Master Concept Plan proposes five guest units of less than 450 S. F. and four guest units between 450 and 750 S.F. and six guest units over 750 S.F. The guest units are the equivalent of 8.3 dwelling units.

The amenity center contains an existing pool, recreational area and a tiki hut which serves beverages including alcoholic beverages.

The schedule of uses includes all the permitted and special exception uses in the Commercial Resort District and the uses of "retail, small," "personal services" and "restaurant" which are appropriate for a resort and those uses are sized to be a subordinate use of the resort.

The request is consistent with the goals, objectives, policies and intent and the intensities of the Fort Myers Beach comprehensive plan. It is consistent with the existing and the planned uses in this area of the Boulevard designation.

The design concept provides for a variety of beach cottages on the site consistent with the original Fort Myers Beach community. The design of the cottages are consistent with the architectural style so familiar to Fort Myers Beach and will provide hospitality and family-oriented resort services. Attached as Exhibit C are photos of the proposed cottage architectural elevations.

The Town found that the request for the bed-and-breakfast contributed to a mixed-use environment without increasing the intensity of use beyond what is there today. The visitors brought to the area by the lodging use will provide additional customers to support nearby commercial uses such as those at Seagrape Plaza. Additionally, it was recognized that by renovating existing 1950s structures the Applicant has helped preserve the Island's cottage-style architecture and scale. This request furthers that goal.

We respectfully submit that this proposed Master Concept Plan is supported by the Community Design Element of the Comprehensive Plan. That Element provides a vision for this area "School Street itself has also become a key connection from the bay to the beach, a palm-line showcase of restored and new cottages. ..." Existing and new in-fill development on School Street is in the spirit and scale of the Beach's classic cottages. The Master Concept Plan and proposal also is consistent with Goal 3 of the Comprehensive Plan which accomplishes the goal: "to revitalize specific transitional neighborhood." The Subject Property lies within "Heart of the Island" area identified for redevelopment in Objective 3-A. Goal 4 of the Comprehensive Plan provides "to keep Fort Myers Beach a healthy and vibrant 'small town' while capitalizing on the vitality and amenities available in a beach resort environment ..." The scale and design of the proposed resort use is consistent with the Beach's small town feeling and capitalizes on this location which is in

close proximity to the beach, the Gulf, as gulf/beach access is less than a 1/4-mile to the north and Pompano Street is even closer to the south.

The urban services to serve this resort already exist and have been serving the existing dwelling units (bed and breakfast) that exist on the site. There are no environmental areas on the site. In the Boulevard designation it provides that a planned development rezoning is required for commercial uses so that appropriate conditions can be placed.

The design of the cottage resort concept is consistent with the harmony of this mixed-use neighborhood. The parking plan provides for back-out parking onto the low volume local streets. The physical scale of the proposed cottages structures are consistent and an asset to the neighborhood. This proposal provides a balance to the rather large institutional structures in proximity to the proposed structures shown on the Master Concept Plan. The enclosed elevations illustrate the beach architecture which meets the design criteria set forth in the Commercial Design criteria in LDC 34-991. The proposed design consists of traditional building forms. To maintain the historic concept, the site design provides for parking in close proximity to the cottages which means that there need to be more access points from the local streets – School Street and Oak Street are appropriate.

The layout of the Master Concept Plan creates usable outdoor space with a compatible style and scale that is an asset to the pedestrian traffic on the surrounding streets. The proposed design is an enhancement to the Town's plan for the Boulevard area and is consistent with Policy 4-C-3 of the Comprehensive Plan, which provides direction concerning commercial locations for new or expanded commercial uses. In the Boulevard category "proposals must be sensitive to nearby residential uses, compliment any adjoining commercial uses, contribute to the public realm as described in this Comprehensive Plan, and meet the design concepts of this Plan and the Land Development Code." The scale and beach cottage architecture is consistent with the Comprehensive Plan and furthers its goals.

The minor commercial square footage is limited to 600 square feet of retail and in Phase 4 1,200 square feet of restaurant (900' indoor, 300' outdoor). These commercial uses would typically be considered as permitted as subordinate commercial due to the minimal square footage. Although they are located along Estero Boulevard and available to pedestrian travelers for shopping and food and beverage service, they are such a small size and scale that they meet the definition of subordinate commercial. These uses would not be a destination-type use. Policy 4-C-3 provides "the neighborhood context of proposed commercial uses is of paramount importance." The proposed resort use that includes small level of retail, food and beverage service is an asset to the surrounding institutional and residential uses in the neighborhood and are sufficiently small in scope that they are a supportive and subordinate use. In Case SEZ2015-00006, it was recognized in 2015 that the Property had been used for short-term rentals in excess of a decade at that time. Staff found that the proposed resort use in 2015 was consistent with the Comprehensive Plan and the Land Development Code. We respectfully submit that the Master Concept Plan presents a unified theme and design that continues with a cottage design that is compatible with the surrounding neighborhood and vision for Fort Myers Beach. Upon completion of Phase 4, the site will consist of 15 guest units with a supportive yet small amount of commercial (retail, and food and beverage service) to support the resort use.

Each phase request three years to obtain a development order and four years to complete the development order.

The proposed location for a resort cottage use is an enhancement to the existing uses surrounding the site.

Attachments:

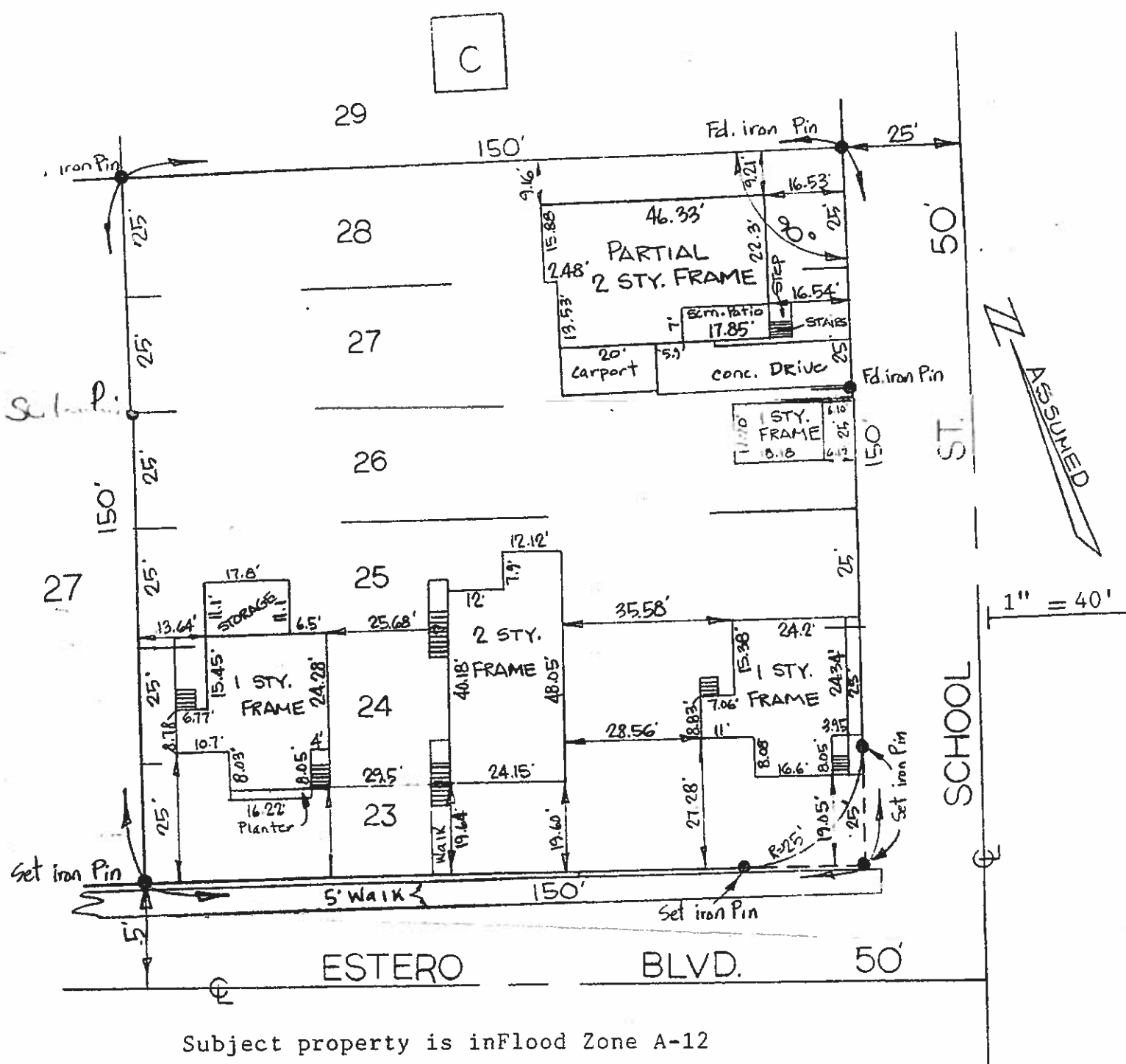
- Exhibit 5-2 survey Lots 23-28; survey Lots 29-34
- Future Land Use Map (Exhibit A)
- Town Council Resolution 16-09 (Exhibit B)
- Architectural elevations (2) (Exhibit C)

FIELDBOOK 203 PAGE 40 DATE 1/7/14		SECTION 19 ,TWP 46 S,RGE 24 E	
NORTH ARROW 	FOUNDATION LOCATION	FIELDBOOK PAGE	LEGEND SET CONC. MON. WCAP I.D. # 3553 SET IRON PIN WCAP I.D. # 3553 FD. CONC. MON. WCAP FD. CONC. MON. FD. IRON PIN ASSUMED ELEVATION BENCHMARK RECORDED MEASURED CONT REVERSE SIDE FINAL SURVEY DATE
SCALE 1" = 30' LEGAL DESCRIPTION (AS PROVIDED BY CLIENT) This is a boundary survey of the following : Lots 29 through 34, Block C, Winkler Subdivision as recorded in Plat Book 8, Page 45 of the Public Records of Lee County, Florida. The property address is 131, 145, 147 & 151 School St. per County Records. 2 PAGES 5-2			
NOTES 1. REPRODUCTION OF THIS SKETCH IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL. 2. NO INSTRUMENTS OF RECORD REFLECTING EASEMENTS, RIGHTS-OF-WAY, AND OR OWNERSHIP WERE FURNISHED THIS SURVEYOR EXCEPT AS SHOWN. 3. NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED. 4. BEARINGS SHOWN HEREON ARE BASED ON <u>Angles are field measured</u> 5. THIS PROPERTY LIES IN FLOOD ZONE AE EL 12 & 13 NAVD88 PER F.I.R.M. PANEL NO. 12071C0554F, DATED 8/28/2008 6. LAST DATE OF FIELDWORK 1/7/14 7. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.		CERTIFICATE I hereby certify that the above described property was surveyed under my direction and the sketch of survey is true and correct to the best of my knowledge. This survey meets or exceeds the minimum technical standards set forth by the Florida Board of Land Surveyors, pursuant to Rule 81G17 - 6 Florida Administrative Code, and pursuant to Section 472.027 Florida Statutes. There are no visible encroachments other than those shown hereon. P.L.S. MARK O. ALLEN P.L.S. #3553 LB #6558	
MARK O. ALLEN, INC. PROFESSIONAL LAND SURVEYOR			
FAX: (239) 992-6070 TELE: (239) 992-8900		10602 WOODS CIRCLE BONITA SPRINGS, FL 34135	
DWN. BY MG	CHK'D BY	ORDERED BY Beverly Milligan	SHEET 1 OF 1 DWG. NO. 2014-3

ALL-STATE LEGAL®

5-2

2 PAGES



Subject property is inFlood Zone A-12

SURVEY PLAT

For Lots 23-24-25-26-27-28, Block "C" WINKLER Subdivision as recorded in Plat Book 8 Page 45. Public Records of Lee County, Florida.

FOR: Donald Nyman

BY: S & H Land Survey Co.
7218 Drake Drive SW
Ft. Myers, Florida 33908

CERTIFICATE OF SURVEY: I hereby certify that the plat hereon meets the minimum technical standards set forth by the Florida Board of Land Surveyors, pursuant to Section 472.027, Florida Statutes.

DATE: May 21, 1987

Richard L. Hardy
Reg. Land Surveyor #3135
State of Florida

2661-26671-2681 Estero Blvd. & 125 School St.

JOB 6208-A Boundary -Location

Richard L. Hordley



RESOLUTION NUMBER 16-09

**RESOLUTION OF THE TOWN COUNCIL OF
 THE TOWN OF FORT MYERS BEACH FLORIDA
 SEZ 2015-0006– Bed-and-Breakfast Inn
 131-151 School Street**

WHEREAS, Myerside LLC, applicant and owner of the subject property, filed an application to obtain a special exception for a bed-and-breakfast inn in the Residential Conservation zoning district; and

WHEREAS, Applicant has indicated the STRAP number for the subject property is 29-46-24-W3-0020C.0290, and the subject property is legally described as indicated on attached Exhibit A; and

WHEREAS, the subject property is physically located at 131-151 School Street, Fort Myers Beach, Florida, and within the Boulevard future land use category; and

WHEREAS, a duly advertised public hearing was held before the Local Planning Agency (LPA) on January 12, 2016; and

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

WHEREAS, on March 7, 2016, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by LDC s. 34-88; and

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

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

1. Determination.

Based upon the recommendations, testimony, and evidence presented by Town staff, LPA, and interested parties, Special Exception SEZ2015-0006 for a bed-and-breakfast inn, as depicted on attached Exhibit A is APPROVED, subject to the conditions set forth in this Resolution.

2. Conditions.

- a. All outdoor lighting on the site will be "fully shielded" or "Full cutoff" fixtures to reduce glare and light trespass onto adjacent properties.
- b. Outdoor activities will be limited to between the hours of 7 AM and 10 PM, unless associated with a special event permit issued by the Town of Fort Myers Beach.
- c. Approval is for a total of 7 units (6 rental units and one owner residence) consistent with the sit plan attached as Exhibit A.

3. Findings and Conclusions of Law.

In accordance with LDC s. 34-88, the Town Council finds as follows:

- a. There are changed or changing conditions that make approval of the special exception request appropriate.
- b. The request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
- c. The request meets or exceeds all performance and locational standards set forth for the proposed use.
- d. The request will have no negative effects on environmentally critical areas and natural resources.
- e. The request will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.
- f. The requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code.

[Balance of page intentional left blank.]

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

Anita Cereceda, Mayor aye
Rexann Hosafros aye
Summer Stockton aye

Dan Andre, Vice Mayor aye
Alan Mandel aye

DULY PASSED AND ADOPTED this 7th day of March, 2016.

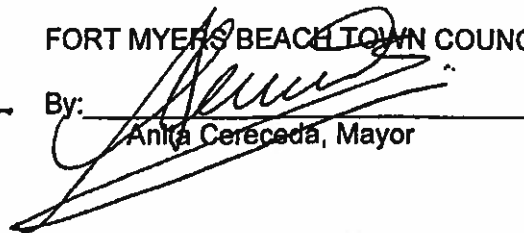
ATTEST:

By:

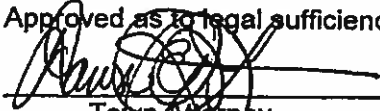

Michelle Mayher, Town Clerk

FORT MYERS BEACH TOWN COUNCIL

By:


Anita Cereceda, Mayor

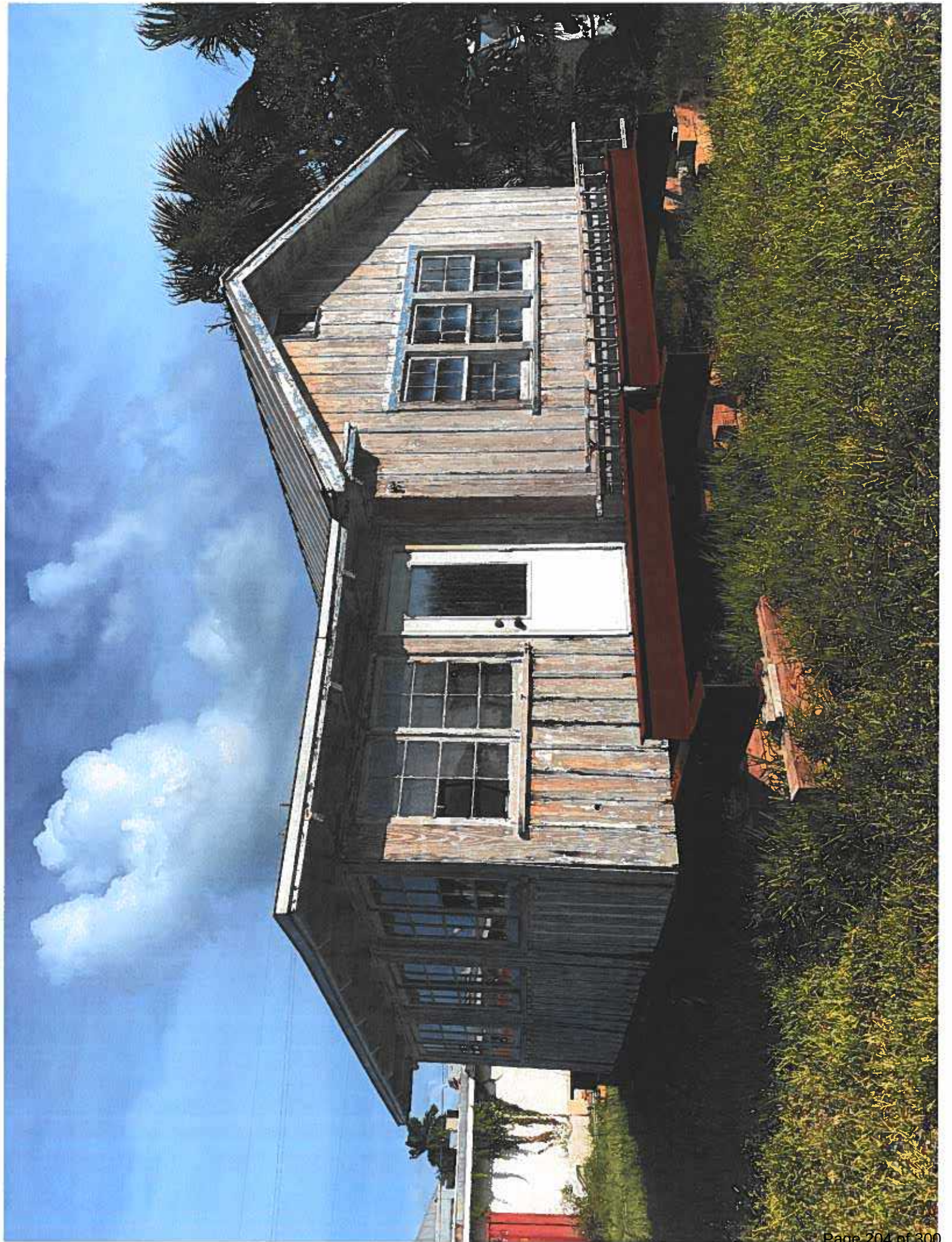
Approved as to legal sufficiency


Town Attorney

Exhibits

A: Legal Description and Site Plan (Survey prepared by Mark Allen attached to staff report)





MYERSIDE RESORT AND COTTAGES DEVIATIONS

Deviation 1:

A deviation from Section 34-953 from the property development regulations for this zoning district side setback from 15' to 6.9' and from Section 10-416(d) Type C buffer width from 15' to 6.9' from west property line for Building 1. D-1.

Justification: Since this is an existing situation and this structure has been in this location for decades, it is appropriate to grant relief from the side setback requirement and from the buffer requirement for Building 1. The concept proposed is a continuance of the Fort Myers Beach early village design. It is important to recognize the CPD proposes a village concept that is an improvement to this neighborhood and a reduced setback is appropriate in this village concept.

Deviation 2:

A deviation from Section 34-953 from the property development regulations for this zoning district side setback of 15' to 6.9' from the west property line for Building 2, the shed, and to 4.4' for Building 7. D-2.

Justification: Deviation 2 is a request for relief from the side setback as set forth in Deviation 1 for Building 1. Building 2 is being relocated from Estero Boulevard to the west property line adjacent to the same parking lot as Building 7 and the shed. Therefore, it is appropriate in the design to align Building 2 with Building 1 to accomplish the village concept. The reduced setback of Building 2 and Building 7 and the shed are appropriate when next to the adjacent parking lot use. The location of relocated Building 2 is appropriate in order to have appropriate spacing from Building 6 on Oak Street. There is no buffer required next to the adjoining use of parking lot so the only deviation for Deviation 2 is from the side setback. The village concept provides that Buildings 2, 3, 4, 5, 6 and 7 surround the courtyard with the amenities of a pool and a tiki hut. It is appropriate to grant setback relief to existing Building 7, relocated Building 2 and the shed to accommodate this village concept.

Deviation 3:

A deviation from the driveway access separation requirement of Section 10-296 along Estero Boulevard to allow a driveway access to the Subject Property that is 66' from the northernmost access and 112' along the south to School Street. D-3.

Justification: This is a request for a deviation from driveway access separation along Estero Boulevard. Currently there are two driveway accesses from Estero Boulevard to the Subject Property. In this CPD the two access points are being reduced to one access point. Phase 1 provides one access point to parking and Building 1. Phase 2 provides one access point to parking and Buildings 1 and 8. Phase 3 reduces access from Estero Boulevard to ingress only and the egress is from the parking lot is on School Street. This access design is maintained and improved in Phase 4. The proposed access point is located 66' from the access point to the north and 112' from School Street to the south.

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 96-31**

WHEREAS, Donald A. & Anne S. Nyman filed an application for a rezoning from TFC-2 (Two-Family Conservation) to Commercial Planned Development; and

WHEREAS, the subject property is located at 2661-2681 Estero Boulevard and 145 School Street, Ft. Myers Beach, and is described more particularly as:

LEGAL DESCRIPTION: In Section 19, Township 46 South, Range 24 East, Lee County, Florida:

Lots 23-28, Block C, WINKLERS SUBDIVISION as recorded in Plat Book 8, Page 45, of the Public Records of Lee County, Florida, lying in Section 18, Township 46 South, Range 24 East, Lee County, Florida.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 19-46-24-02-0000C.0230 and 19-46-24-02-0000C.0270; and

WHEREAS, Donald A. & Anne S. Nyman, the owners of the subject parcel, authorized Humphrey & Knott, P.A., to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was advertised and held on November 28, 1995 before the Lee County Hearing Examiner who gave full consideration of the evidence available; and

WHEREAS, a public hearing was advertised and held on February 9, 1996 before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons and denied the rezoning; and,

WHEREAS, the applicants applied for and received a F.S. 70.51 hearing and modified their application and requested a rehearing; and,

WHEREAS, a public rehearing was advertised and held on November 18, 1996 before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council ~~APPROVES~~ / DENIES the requested rezoning from TFC-2 to CPD.

SECTION A. CONDITIONS:

The rezoning and Master Concept Plan are subject to the following conditions:

1. The development and use of the subject property is to be in substantial compliance with the approved Master Concept Plan entitled "Nyman - CPD" (7-14-96) as prepared by David Estes & Associates, except as may modified by the conditions herein. Total building area or intensity may not exceed 3,850 square feet of retail and office use and 5 multiple family units, as indicated on the Master Concept Plan.

2. This development may be developed in accordance with the following Property Development Regulations:

Minimum Setbacks:

Street:	70 feet (Estero Boulevard)
Side Street:	25 feet (School Drive)
Side:	15 feet
Rear:	15 feet
Minimum Open Space:	20%
Maximum Lot Coverage:	40%
Maximum Building Height:	30 feet above minimum flood elevation

3. The following will be the approved Schedule of Uses for this planned development:

5 MULTIPLE FAMILY UNITS
ALL PERMITTED USES OF THE CN-2 DISTRICT
SINGLE-FAMILY AND DUPLEX DWELLING UNITS - existing only

4. This zoning approval does not address the mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions may be required at the time of issuance of a local Development Order.
5. Approval of this rezoning does not give the Developer the undeniable right to receive any local Development Order approval that exceeds the Year 2010 Overlay use allocation, if such allocation exists, for the applicable district.
6. This development is to comply with all requirements of the Lee County Land Development Code as amended by the Town of Fort Myers Beach at the time of local Development Order approval, except as may be granted by deviation as part of this planned development.

SECTION B. DEVIATIONS:

The Master Concept Plan deviates from several Lee County development standards. The proposed deviations are granted or denied as set forth below:

Deviation 1, which requests relief from LDC Section 10-285 which provides for connection separation of 660 feet along an arterial road to a requested 125 feet along

Estero Boulevard from the center line of School Drive is APPROVED WITH THE CONDITION that the access point is designed and constructed as right-in/ right-out only with a raised traffic median.

Deviation 2, which requests relief from Section 10-285 of the Land Development Code (LDC) providing for a 660 foot connection separation along arterial roads to allow connection separation of 65 feet from the centerline of a private drive is APPROVED WITH THE CONDITION that the access point is designed and constructed as right-in/ right-out only with a raised traffic median.

Deviation 3, which requests relief from Section 34-934, note 10 that requires 50,000 square foot of commercial uses to permit five (5) dwelling units in a Commercial Planned Development containing 3,850 of commercial uses is APPROVED.

SECTION C. MASTER CONCEPT PLAN:

A reduced copy of the Master Concept Plan entitled "Nyman - CPD" 7/14/96, is attached and incorporated into this resolution by reference.

SECTION D. FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval or the requested rezoning:

1. The proposed uses, as conditioned, ~~are~~ / are not appropriate for the site and no changed or changing conditions make approval of this rezoning request inappropriate.

2. As conditioned, the CPD rezoning and approved deviations:

(A) ~~will not have~~ / will have an adverse impact on the intent of the Land Development Code

(B) ~~are~~ / are not consistent with the goals, objectives, policies and intent of the Lee Plan and with the densities, intensities, and general uses set forth in the Lee Plan specifically Policies 5.1.5, 6.1.2, 6.1.5, and 18.2.1.

(C) ~~meet or exceed~~ / do not meet all performance and locational standards set forth for the proposed uses.

(D) ~~are compatible~~ / are not compatible with existing or planned uses, and are ~~not~~ contrary to the public health, safety or welfare and will not cause damage, hazard, nuisance or other detriment to persons or property.

(E) ~~do not place an undue burden~~ / place an undue burden upon existing transportation facilities, or other facilities or services.

(F) ~~will comply~~ / will not comply with all applicable general zoning provisions and supplemental regulations pertaining to the uses set forth in the Land Development Code.

(G) ~~enhance~~ / do not enhance the achievement of the objectives of the CPD rezoning, and promote and preserve the protection of the public health, safety or welfare.

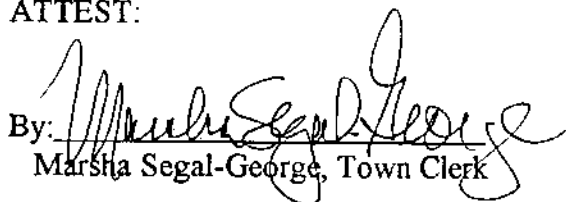
3. Urban services, as defined in the Lee Plan, ~~are or will~~ / will not be available and adequate to serve the proposed uses.
4. The conditions imposed on the CPD zoning and the approved deviations are reasonably related to the impacts on the public's interest created by or expected from the proposed uses, and, in conjunction with other land development regulations, will protect the public's interest, health, safety and welfare.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

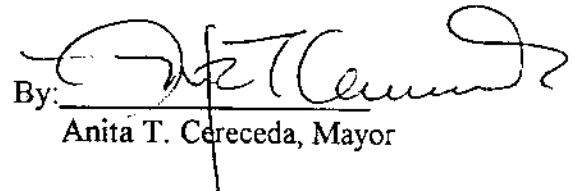
Anita T. Cereceda	<u>Yes</u>
Ted FitzSimons	<u>Yes</u>
William (Rusty) Isler	<u>Yes</u>
Garr Reynolds	<u>Yes</u>
Ray Murphy	<u>No</u>

DULY ADOPTED this 18th day of November, 1996.

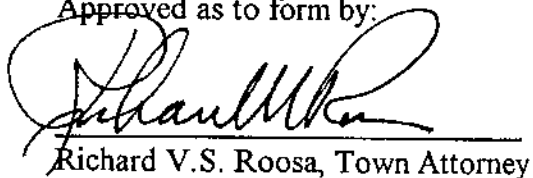
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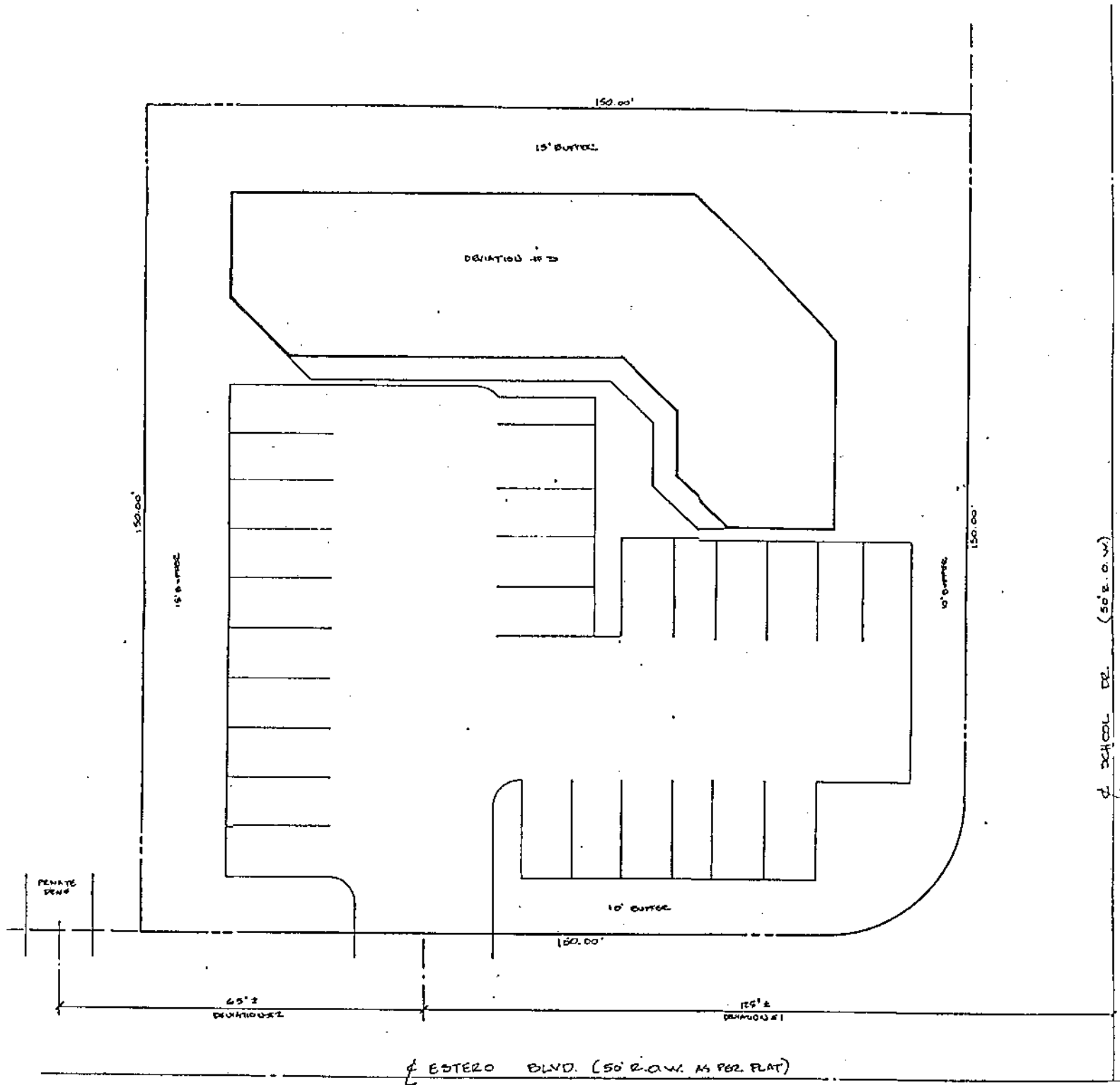
By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney



NYMAN - C.P.D.

7-14-96

**FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 18, 1996**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday, November 18, 1996, at 6:35 P.M. by Anita T. Cereceda, Mayor. Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The invocation was given by Jim Overhulser of the Vineyard Christian Fellowship of Fort Myers Beach.

IV PUBLIC COMMENTS AND INQUIRIES

A CEIL SPUHLER

Mrs. Spuhler, who lives on Estero Boulevard, asked the Council to extend the slow speed zone from 500' to 1000'. She felt that this was important for three reasons: for the safety of swimmers who go out further during low tide, to soften the noise, and to make private owners aware of the fines. She felt that both rental craft and private craft should be under the same restrictions.

B SCOTT PORTER

Mr. Porter has a business, Flotilla Foods and Sundries, which is licensed by the County as a floating vendor, and licensed by the state as a restaurant. His licenses are in good standing, and he is based at a local marina, but the vessel safety ordinance, as proposed, would disallow his business. He asked the Council to grandfather his license.

C J. D. WILLIAMS

Mr. Williams, owner of Sundance Water Sports, spoke about the personal watercraft ordinance. The items that worry him the most are on page 7(27-50) and page 13(27-55B), which concern non-conforming licenses, which will allow about 35-40 waverunner stands on the island.

D TED PRIMICH

Mr. Primich, from the Lani Kai, recommended tying the number of waverunners allowed for each license to the number motel rooms, parking spaces, or beachfront footage. This proposed ordinance will cut his volume in half. With only eight waverunners he cannot pay his monthly rent and he will be out of business. Maybe a distinction between conforming and non-conforming licenses would help.

E SHARON FAIRCLOTH

Mrs. Faircloth, of Holiday Waverunners, is worried that increasing the idle speed zone to 1000' as suggested by LPA, although good for swimmers, would put the waverunners out so far that she cannot see them from shore. Their business only runs 6-8 watercraft, but she thinks it is fair to allow more if a place is big enough to handle it.

F LONNIE CLARK

Mr. Clark said the original purpose of Lee County 95-13 was to promote safety and to preserve and protect natural resources. Little Estero Island is a critical wildlife area and he thinks it should have the same setback requirements.

G JAMES TUCK

Mr. Tuck lives on Estero Boulevard, and wants to move the limit out to 1000 feet which will go a long way toward eliminating noise.

H CHRIS WEBBER

Mr. Webber, of Mid Island Water Sports, is OK with 1000 feet because of noise, but it does take his customers very far out. He recommended moving the buoys out to 700 or 750 feet. He also wanted to talk about the requirement for CPR. His insurance agent said it would be unenforceable, and if there was an accident while someone was on duty without CPR, the Town could be liable because they did not enforce the law. Also, the wording should be changed to one half hour before or after sunset and sunrise in order to agree with Coast Guard rules. He feels that the Town should allow more than 8 watercraft for the larger operations.

G BILL PERRY

Mr. Perry, of Aqua Sports, supports increasing the slow speed zone to 1000' and he will put his buoys out that far anyway because it makes his neighbors happy. He thinks that 1000 feet would help protect nesting areas and manatees in the back bay. The variance clause needs to be looked into and perhaps based on parking spaces or number of motel units.

V APPROVAL OF MINUTES FROM NOVEMBER 4, 1996

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the minutes be approved as read. The motion passed unanimously.

VI APPROVAL OF EXPENDITURES

Mr. FitzSimons asked about the bill for Spikowski and Associates. Marsha Segal-George said that the majority of the bill is for the LPA and a small amount is for helping the Town in working with the county and with unusual requests.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the expenditure report be accepted. The motion passed unanimously.

VII COUNCIL MEMBERS' ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy noted that another person died on Estero Boulevard this week, and he suggested that the Town contact the county to light them up or get blinking lights. Marsha Segal-George asked if there had ever been any talk of raising the walkways (like speed bumps). Mr. Gucciardo asked if the Council would like this to be handled directly with the county or through the traffic committee. Mayor Cereceda suggested that he contact DOT before the next traffic meeting so they will be prepared to talk about the options at the meeting. Mr. FitzSimons wondered about battery operated blinkers or a button for the pedestrian to push. Mayor Cereceda said perhaps the sheriff could be contacted to give out tickets. Mr. Reynolds would like to see a sign at each crosswalk telling cars to stop when pedestrians are in the crosswalk. We also need publicity to get word out to remind people to stop for pedestrians.

B GARR REYNOLDS

He spoke about the personal watercraft ordinance, particularly that access to the gulf be required for a license, so that they are not using public access. He also agreed that a large hotel should be allowed more waverunners because it is an extension of their business.

He had planned to talk about Palmetto Street, but decided to wait until the next meeting so that the other Council members could study his proposal.

He reported that he polled the traffic committee and they unanimously recommend a 25 cent fare on the trolleys rather than having them be free. They also agreed that it was necessary to have 3 or 4 trolleys. Mr. Whitaker suggested having the fourth trolley only operate during peak hours, perhaps from 10 AM to 6. The committee also recommended closing Times Square to traffic and that commercial traffic be restricted. He also recommended adding a right turn lane on San Carlos.

C RUSTY ISLER

When Marsha Segal-George started working, the Town was in danger of losing the CRA project and the pool, but because of her expertise, both projects have been protected and are going forward. He presented her with a poster in thanks for her work.

D TED FITZSIMONS

Mr. FitzSimons had no items to bring to the Council.

E ANITA CERECEDA

Mayor Cereceda has been meeting with Times Square merchants, but there are still a lot of unresolved problems. She thinks it is now time for the Council to decide whether to close the road or not, so that the merchants can decide whether to sue or to move on and be happy. She would like to schedule the first public hearing for December 2, at 3:00 PM. There are still some legalities to be investigated, but Mr. Roosa thought they would be resolved by then.

She thinks it is time to buy another computer for volunteers or Council members to use, because there are only three terminals and they are always in use by the three staff members. Mr. Isler will look into it and bring cost estimates to the next meeting.

She publicly thanked the staff for their preparation for the meeting with the commission. She thought the meeting went well because they were so well-prepared.

She also thanked everyone for the opportunity to serve as mayor for the first year.

VIII PRESENTATION BY MR. FETZER ON THE TROLLEY

Mr. Fetzer said that core service is one trolley per hour, seven days a week, from Santini Plaza to Bowditch Point, and they also provide handicapped service. From December 15 to April, there will be two trolleys per hour. He prepared two options, one for one addition trolley, and the other for two additional. Option 1 would provide service every 20 minutes, and option 2 would be every 15 minutes. If the Town adds extra trolleys, they could extend the route to Carl Johnson if the Town would like. He said that service remains hourly year round in the rest of the county and is only increased on Fort Myers Beach during season. Several years ago they investigated the possibility of allowing trolleys to use the middle lane only if traffic is at a dead stop. Both the state and the county expressed concern because of taking away turn lanes, the problem of how trolleys would pass each other, and the safety of where people could deboard. Mayor Cereceda wondered about an express trolley where stops would be at crosswalks since traffic is supposed to stop at those anyway. Lee Tran's proposals are based on \$40 per hour (the national average is \$68), which he said is their standard operating cost. Since the Lee Tran has eight operational trolleys, and six of them are sitting idle, Mr. Gucciardo questioned why it costs \$40 for additional trolleys. He thought that additional trolleys should be billed for actual costs only. The Council asked if the Town can lease the idle trolleys, but Mr. Fetzer said that they cannot lease to a private party, and it would present a problem to lease to the Town because Lee Tran is the designated provider for the area. The Council questioned if the Town could buy the trolleys since they are devalued beyond their useful life, and Mr. Fetzer answered that they will have to auction them, probably next year, but that governmental entities have first chance at the bid. They have ordered new trolleys (which cost about \$580,000 new), and they need to receive them before they auction the old ones. In response to a question, he answered that back when the Town was provided four trolleys and they were free, there were 400,000 riders. Now there are 200,000 riders. The Council will need to let him know within a week if they want to add another trolley in December.

The Council took a break at 7:45 PM and reconvened at 7:52 PM.

IX PUBLIC REHEARING ON DONALD A. & ANNE S. NYMAN REQUEST (95-07-032.02Z)

Mr. Reynolds discussed a paper that he had distributed to the Council concerning the Nyman hearing. He requested that it be continued until a later date because the map shows a different zoning (RM2) and because the County staff did not do a review of the new request. He also mentioned that the request does not show the number of square feet of the five apartments.

Motion: Mr. Reynolds moved and Mr. FitzSimons seconded that the rehearing be continued until additional information is received. After discussion, Mr. Reynolds voted in favor of the motion. Mr. FitzSimons, Mr. Murphy, Mr. Isler and Mayor Cereceda voted against the motion. The motion failed.

Discussion: Mr. Isler suggested that they have the hearing, and then postpone it if they find they need more information after the information is given. Mr. Roosa said that the problem is that the map shows RM2 zoning, and the applicant made his application based on the map. It is the county's position that it is zoned

TFC2 (two family conservation.) Mr. Roosa explained that the Council first heard this case in February, the Council denied the request, and the Nymans applied for a special master hearing. They have redesigned their request to address the objections of the Council, and have now requested a rehearing. There is no procedure for it to be re-reviewed by the County. The Town asked for their input, but it was not necessary.

Mr. Roosa provided the Council with a resolution to be completed at the end of the hearing. In addition, he provided copies of the land plan, goals and objectives that the hearing officer decided were in compliance.

Matt Uhle reviewed the case which was first heard nine months ago. The parcel is at School Drive and Estero Boulevard, and includes six platted lots totaling 22,000 square feet. There are four structures containing five units which are 30-50 years old and not in great shape. The area is called "urban community" on future land use maps. The original proposal was for 6000 square feet of commercial building on two floors, with access points on School and Estero. The County staff did not approve the request because of their concern that it would violate the section of the comp plan which protects against commercial intrusion into a residential neighborhood. However the hearing examiner did not see it as a violation, and there was no neighborhood objection, just objection from the Civic Association. However In February the Council voted 4 to 1 to deny the request. The Nymans opted to take the request to a special master because they did not want to litigate, and they thought that with input from the Council, they could address the problem and make changes that would be agreeable. The Town Manager and the Town Attorney agreed.

The changes are: 1.) They removed the access point on School Drive; and 2.) They changed the use from 6000 feet commercial, to 3850 feet on the bottom retail, and 3850 feet or less in five apartment above. These two changes address the concerns of traffic and intrusion into a residential neighborhood and will reduce traffic by 25%. He noted that there are other buildings in the area that have residential above. They have also included extraordinary buffering (8' fence and tall trees) that was recommended by the hearing examiner. There will be no hotel/motel use and there is more parking. Certain restaurants might be allowed.

Mr. Roosa swore in Mike Roeder, a planner with Humphrey and Knott. They have left open the option of floodproofing the bottom and then the building won't have to be elevated. There will only be one floor of commercial and it will be on the first level in any case.

Mayor Cereceda opened the meeting to public comment.

A HAROLD HUBER

Mr. Roosa swore in Mr. Huber. He questioned if these are going to be rental units, and if so, does the Council plan to establish a minimum rental period for the units (daily, weekly, monthly.)

The public hearing was closed.

Mr. Roosa stated that the County has identified Estero as a constrained road, which takes away the impact of traffic, so the Council cannot use traffic as a limiting factor.

Mr. Isler said that the neighborhood, in this particular spot, is residential, except for the school, library and park, which support the neighborhood. He thinks that the request will damage the residential nature of the area, and that it will have a negative impact on the school.

Mr. FitzSimons noted that the plan doesn't add residential units, but it adds commercial traffic on a highly traveled area of the road. Also the pool is being added to the area soon.

Mr. Roosa asked the Council to vote on the individual parts of SSection D, paragraph 2:

A) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request will have an adverse impact on the intent of the Land Development Code. Mr. Murphy voted that it will not.

B) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request is not consistent with the goals of Lee Plan policies 5.1.5, 6.1.5, and 18.2.1. Mr. Murphy voted that it is.

C) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request does not meet performance and locational standards. Mr. Murphy voted that it did.

D) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request is not compatible with existing or planned uses. Mr. Murphy voted that it is.

E) Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request places an undue burden on existing facilities. Mayor Cereceda and Mr. Murphy voted that it does not.

F) Mayor Cereceda, Mr. FitzSimons, Mr. Isler, Mr. Murphy, and Mr. Reynolds voted that the request will not comply with zoning provisions.

G) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that the request does not enhance the objectives of the CPD zoning. Mr. Murphy voted that it does.

Mr. Roosa asked the Council to vote on the remaining paragraphs in Section D:

1) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that proposed uses are not appropriate for the site. Mr. Murphy voted that they are.

3) Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted that urban services are not adequate to serve the proposed use. Mr. Murphy voted that they are.

4) Mr. Roosa determined that this question does not apply.

Motion: Mr. Isler moved and Mr. FitzSimons seconded that the request to rezone from TFC-2 to CPD be denied. Mayor Cereceda, Mr. FitzSimons, Mr. Isler and Mr. Reynolds voted in favor of the motion. Mr. Murphy voted against the motion. The motion passed.

X PUBLIC HEARING OF VESSEL SAFETY ORDINANCE

Mayor Cereceda read the titles and opened the meeting for public comment.

A SCOTT PORTER

Mr. Porter stated that Section 8, which prohibits floating vendors, would end his business for which he is already licensed. He is commercially registered (although no one else may board his boat because he is not a captain), and he is inspected by the health department. He operates about six months of the season, and has been in business for a year.

Marsha Segal-George stated that this is the only license that would be affected. Mr. Roosa suggested adding, after a comma, “except those with 1997 Lee County floating vendor licenses based in Fort Myers Beach and having no more than one boat.” Mr. Isler asked if the business could then be sold later and he was told that it could.

B SANDI SUTER

Mrs. Suter doesn’t think the Town needs floating vendors, and she is concerned that we are guaranteeing that Mr. Porter has a corner on the market and that might be considered restraint of trade.

C BILL PERRY

Mr. Perry vouched for Mr. Porter, and said that the Town should not take away his business. He suggested having a cap on the number of floating vendors allowed instead of grandfathering Mr. Porter. He stated that everyone else who has tried this business has gone out of business, so there is not a problem with cornering the market. He also stated that it is not fair to say that rental jet skis must go out 1000 feet, and then allow private ones to only go out 500’. In addition, you could have powerful power boats at 500 feet, but the small personal watercraft must go out 1000’. He thought travel should be slow speed for 1000’, except in channels, where travel would be at posted speed.

D LINDA KANE

In 1995 she applied for a floating vendors license and was denied because they said they no longer do floating vendors. She must pay high rental on beachfront property year round and it is unfair that Mr. Porter can operate only 3 months and not pay any rent.

E HEIDI MIHAIOFF

Ms. Mihailoff stated that she has no problem with requiring 1000 feet, except that it is a safety factor, since the water is much deeper, and most of the renters are not experienced, are minors, or are elderly. She would like the ordinance to state that in case of emergency, the rental owner can ignore idle speed so that the operators can get out to their renters more quickly. Regarding floating vendors, she is limited from serving tourists on the beach, yet he can serve from a boat.

F JIM WILLIAMS

Mr. Williams questioned the placement of the buoys. They are at 500’ and are set by the county, and he wondered if they would be moved out if the council moves the line to 1000’. The rule needs to be consistent. Regarding floating vendors, he recommends taking that definition out of the ordinance, because they are all excluded anyway.

G SCOTT PORTER

Mr. Porter stated that his license is tied to the restaurant, and perhaps if Ms. Kane was turned down for a floating vendor’s license, it was because she was applying for another type of business.

The public hearing closed.

Motion: Mr. FitzSimons moved that in Section 9(1), the wording be changed to “all waters within 1000 feet offshore from all beaches or offshore structures, except within marked channels” and that the last sentence of the paragraph be eliminated. There was no second. The motion died.

Motion: Mr. Murphy moved and Mr. Isler seconded that the words be added to Section 8 “except vendors with 1997 Lee County floating vendor licenses who are based in Fort Myers Beach and have only one boat.” The motion passed unanimously.

Motion: Mr. Isler moved and Mr. Murphy seconded that the ordinance be accepted with the above change. Mr. Isler, Mr. Murphy, Mayor Cereceda, and Mr. Reynolds voted in favor of the motion. Mr. FitzSimons voted against the motion. The motion passed.

Discussion: Mr. FitzSimons stated that he thought the area for slow speed should be 1000'. Marsha Segal-George offered a compromise. Since enforcement is a major issue, she suggested that after the Council passes all three water ordinances, that they give them 6 months to see if enforcement fixes some of the problems, then the Council can revisit it.

XI FIRST READING OF JET SKI ORDINANCE

Mayor Cereceda read the titles. The public hearing was opened.

A BARBARA KEENE

Mrs. Keene lives on the back bay and is concerned about jet skis on the back bay. There are fishermen sitting quietly around the mangrove islands, and there is an opportunity for collisions and for damage to the sea grass. The eco tours cannot hear over fast speed, but could hear if they are kept at idle speed. She would like the slow speed zone extended to 1000 feet.

B JOHANNA CAMPBELL

Mrs. Campbell pointed out that some rookeries have been lost on the back bay because the jet skis have been going around the mangroves and scaring off the birds. The 1000' limit was supported in the LPA meeting by all the vendors. If you want the tourists to come and see the birds, please do not disturb them. She asked the Council to keep the slow speed zone at 1000 feet.

C KATHLEEN FISHER

Ms. Fisher, of CRA Services, stated that jet skis are very small part of all the craft in our area. She does not think 1000 feet is too far. She would rather have her renters out farther where there is less congestion. She also spoke about the point that licenses are on commercial property, and they do not need to be tied to hotel rooms. She also asked the Council to provide the variance for their Dolphin Venture Tours that has been in business for three years.

D BILL PERRY

Mr. Perry, of Aqua Sports, said that he has talked to two jet ski manufacturers who have volunteered to lease the Town (for \$1.00) vehicles to be used for enforcement. He recommends the Town take them up on it and get it done in time for this season. The officers would be riding on vessels that can go up to 60 MPH so they can pull over most vehicles. He warned the Council that they cannot discriminate against personal water craft or they will face litigation by the manufacturers. If the Council moves the slow speed zone to 1000' for rentals, it should be for everyone. He said it is no problem to see the jet skis at 1000 feet. You can see a boat at one mile.

E JOHN MULHOLLAND

Mr. Mulholland agrees about enforcement or the ordinance is worthless. He said it is an excellent idea to get vehicles from the manufacturers.

F HEIDI MIHAIOFF

Ms. Mihailoff agreed that it is not a problem to see the jet skiers at 1000 feet, but it takes longer to go rescue them in case of an emergency. She understood that floating vendors are to service people on boats and parasails, not to people on the beach. If they are selling to people on the beach, they should be required to have restroom facilities.

G JIM WILLIAMS

Mr. Williams mentioned that on page 2, eco tours on jet skis must stop in order to communicate. He mentioned that since the Council just passed 500' limit on the vessel safety ordinance, then this one should agree. He mentioned the paragraph that allows vendors to have jet skis moored in the water, and he is afraid it looks like you could have floating waverunner stands. He likes the statement that PWVL license holders must comply with the Land Development Code.

The public hearing was closed.

Mr. Isler mentioned that on Section 27-54, the wording after the semicolon should be “or east of Big Carlos Pass Bridge”.

Marsha Segal-George stated that the LPA had put in a section for a variance if a vendor wants to apply for more than eight skis. They will have to make a separate application to the Council.

Mr. FitzSimons asked if they were going to leave this ordinance at 1000’, if all other boats can go fast after 500 feet. He also stated that Section 27-48(a3) needs to be changed to ½ hour before sunset and ½ hour after sunrise to conform to Coast Guard regulations.

Mr. Isler questioned whether there is a plan to post the rules around the rookeries better. Marsha Segal-George stated that the Town can only take the lead in our jurisdictional waters. She hopes having a seat on the Arnold Commission will help.

The ordinance was set for second public hearing on December 2.

The Council took a break at 10:15 PM and reconvened at 10:25 PM.

XII DRAFT DISCUSSION OF PUBLIC SERVICE TAX ORDINANCE

Marsha Segal-George recommended that this be moved to the next meeting. She explained that this ordinance is necessary in order to stake out the town’s territory, but that it needs more work.

XIII RESOLUTION OPPOSING OIL AND GAS EXPLORATION IN THE GULF

All members of the Council were in favor of sending this resolution to the Governor.

XIV RESOLUTION ON NATIONAL FLOOD INSURANCE PROGRAM (FEMA APPLICATION)

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the resolution be accepted. The motion passed unanimously.

XV COUNCIL REORGANIZATION

A ELECTION OF MAYOR AND VICE-MAYOR

Mr. Reynolds asked the Council to consider following the policy that Sanibel has of rotating the mayorship and vice-mayorship each year. He nominated Mr. FitzSimons for mayor and Mr. Isler for vice mayor, but they both declined the nomination.

Mr. Isler nominated Anita Cereceda for Mayor and Ted FitzSimons for Vice-Mayor. The vote was unanimously in favor.

B CHANGES IN ASSIGNMENTS

The Council agreed to leave the assignments unchanged.

XVI TOWN MANAGER’S ITEMS AND REPORTS

The Town Manager had no items to bring before the Council.

XVII TOWN ATTORNEY’S ITEMS AND REPORTS

The Town Attorney had no items to bring before the Council.

XVIII PUBLIC COMMENTS AND INQUIRIES

There were not public comments.

XIX ADJOURNMENT

The meeting was adjourned at 10:35 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Special Exception [SEZ] to permit a Bed & Breakfast in the Residential Conservation (RC) Zoning District

CASE NUMBER: SEZ2015-0006

STAFF REPORT DATE: February 16, 2016

COUNCIL HEARING DATE: March 7, 2016

COUNCIL HEARING TIME: 2:00 PM

STAFF RECOMMENDATION: **APPROVE** (as conditioned)

I. APPLICATION SUMMARY

Applicant/Agent: Myerside LLC/Roland Weinmann

Request: A Special Exception for bed-and-breakfast inn use in the RC zoning district.

Subject property: See Exhibit A

Physical Address: 131-151 School Street

STRAP #: 29-46-24-W3-0020C.0290

FLU: Boulevard within Platted Overlay

Zoning: RC (Residential Conservation)

Current use(s): Lodging - weekly rental of 6 dwelling units
Residential – duplex dwelling unit occupied by Applicant

Adjacent zoning and land uses:

North: Church, IN (Institutional) & Single family, RC (Residential Conservation), Mixed Residential & Boulevard within Platted Overlay FLUM

South: Library (IN), Boulevard FLUM

East: Elementary School (IN), Mixed Residential FLUM

West: Single family (RC), Boulevard FLUM

II. BACKGROUND AND ANALYSIS

Background:

The subject site is located at 131-151 School Street at the intersection with Oak Street. The site is a combination of 6 lots platted as part of Winkler's subdivision in 1931 (Winkler's Subdivision, Block C, Lots 29 – 34) (See Exhibit B). Each lot is approximately 25 feet in width and 150 feet in depth.

Based on information found on Lee County Property Assessor Field Cards (see Exhibit C) the six platted lots appear to have been originally developed as three separate properties, each consisting of two of the platted lots, and each property having one structure.

Property deeds show that the three individual properties came under common ownership by 1962 and have remained in common ownership since that time.

The current property configuration resulted from the combination of three separate parcels in 2008 (STRAP #s 19-46-24-W3-0020C.0290, 19-46-24-W3-0020C.0310 and 19-46-24-W3-0020C.0330)

There is one prior zoning action on the property; Lee County Resolution Z-72-18 dated February 1, 1972 (See Exhibit D) that granted a variance for an apartment under a duplex for personal home use on Lots 33 and 34. Additionally, ZVL2013-008 verified that the subject property consists of six platted lots (See Exhibit E).

Currently there are three residential structures on the subject property; details for each structure, as shown in the Lee County Property Appraiser's records, are provided in the table below:

Lots	Year Built	No. of Floors	No. of Dwelling Units	Sq. Footage of Unit
Lots 33 & 34	1969	Two stories	4 units	Base 812 Apt 1 772 Apt 2 784 Apt 3 754
Lots 31 & 32	1957	Two stories	2 units	Base 768 Apt 1 625
Lots 29 & 30	1958	One story	1 unit	504

Salt Life Inn LLC (aka Myerside LLC), represented by Roland Weinmann and Beverly Milligan purchased the subject property on December 31, 2013. According to the Applicant, at the time of purchase the seven dwelling units on the property were not being used as vacation rentals, rather it was the “last step before homelessness” for a group of transient tenants. In the month between the closing and when the Applicant took possession of and moved onto the subject property the tenancy had completely turned over except for one individual. Only one of the seven dwelling units had a verified lease and many of the units were being sublet in whole or part(s) to others. The Applicant described finding individuals living in attics, in tents in the yard, and sleeping on beds in living rooms. One of the units was reportedly being used as a puppy mill. There are six documented incidents when Lee County Sheriff’s Deputy’s responded to disturbances on the property in 2014.

Between January and July 2014 the Applicant took steps, and went through the legal process, to evict non-paying tenants from the property; others left of their own accord. During this time the Applicant made significant improvements to the property; a summary of the permits issued for the property is provided in the following table.

Permit No	DESCRIPTION	PERMITTYPE	PERMITSUBTYPE
BLD14-0017	SFR * R/R KITCH + BATH CABINETS, SHOWER, SINKS, TOILET	BUILDING	REMODEL
COM14-0015	REMODEL IN UNITS C & D, ADD EXTERIOR DECK TO UNITS A & C	COMMERCIAL	REMODEL
COM14-0016	R/R WINDOWS WITH IMPACT	COMMERCIAL	REMODEL
DEM14-0001	SFR * INTERIOR DEMO	DEMO	SUBCONTRACTOR
ELE14-0142	KITCHEN REMODEL	ELECTRICAL	REMODEL
ELE14-0298	COMMERCIAL IN GROUND POOL	ELECTRICAL	SUBCONTRACTOR
FNC14-0009	WOOD PRIVACY FENCE	FENCE	COMMERCIAL
PLB14-0063	MOVE SINK	PLUMBING	TRADE
POL14-0060	COMMERCIAL IN GROUND POOL	POOLS AND SPAS	POOL IN GROUND

In addition to the renovations and additions reflected in the permits above, the Applicant made many aesthetic improvements to the property, including painting the structures’ exteriors and installing extensive landscaping comprised primarily of native species. Pictures of the renovations and property improvements are provided in Exhibit F.

The property re-opened for weekly rentals in January 2015, and reportedly had a successful first “season.” The Applicant reports having a mix of weekly and monthly rentals last year; enough business to hire two full-time staff members. It is the success of the Applicant’s rentals; the installation of signage indicating the “office” (the Applicant’s residence on the property), placement of commercial signage on the property, and hiring of staff members that precipitated this application for Special Exception.

The business activities on subject property came to attention of Fort Myers Code Enforcement in August 2015. Code Enforcement staff research revealed that no use permit, home occupation or commercial use, had been issued for the subject property. Therefore, a code violation (CE15-0344 see Exhibit G) was issued to the Applicant.

The weekly rental of dwelling units is a permitted use in the RC zoning district. However, this rental use does not include an on-site rental office, commercial signage, or on-site staff. Although a home occupation is also permitted by right in the RC district; the Town's home occupation regulations (See LDC 34-1772) specifically prohibit commercial signage or the employment of outside staff.

To resolve the code violation on the subject property the Applicant must obtain a use permit from the Town. The current business operations on the property require a commercial use permit. Issuance of the commercial use permit requires zoning verification that the use is permitted. This can be accomplished by obtaining a special exception for a bed and breakfast inn.

Applicant Request:

The Applicant has submitted a request for a special exception to permit a bed-and-breakfast inn in the RC district (see Exhibit H). The intent of the request for a bed-and-breakfast inn special exception is to bring the legally designated "use" of the subject property into conformity. A special exception will allow the applicant to obtain a Town issued certificate of use for a commercial business, versus operating as an agglomeration of seven separate legally permitted weekly rental units.

Setting/Context

The subject site is located in a predominately institutional area, directly adjacent to the Bay Oaks Community Pool, across Oak Street from the Bay Oaks Recreation Center ball fields and Fort Myers Beach Elementary School, and across School Street from the Fort Myers Beach United Methodist Church. There are two residential parcels between the subject property and Estero Boulevard. The dwelling units on the subject property are oriented around a center courtyard and pool area.

Special Exception Use

LDC Chapter 34 defines the term special exception as follows:

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

As noted above, the subject property is primarily surrounded by institutional uses; there is one single-family residence adjacent to the subject property. The improvements the Applicant has made to the subject property over the past two years has done much to promote the safety, order, appearance and prosperity of the property and generally improved the same for the neighborhood. The evidence of this is the reduction in the number of incidents (involving people) Lee County Sheriff's Deputies responded to at/in the vicinity of the property; six in 2014 and two in 2015 (See Ex I).

The special exception process provides the opportunity to condition the requested use if the conditions are reasonably related to the impacts of the use that is the subject of the request.

Previous Approvals:

There is one previous approval on record for the property; Lee County Resolution Z-72-18. This Resolution granted a variance for an apartment under a duplex on Lots 33 and 34 of the subject property. See Ex. G.

Staff notes that the duplex referred to in Resolution Z-72-18 is recorded as a triplex on the field card for the property dated 1967 (See Ex.C).

Applicant's Reasons for Request:

The Applicant provided the following reasons for why the subject property qualifies for a Special Exception:

- A. There is precedent for this type of exception on Fort Myers Beach.*
- B. The property is zoned for weekly rentals, which is well suited for a bed and breakfast.*
- C. The property location, size, and layout is well suited to a bed and breakfast. Everything is aimed to the center.*
- D. We [the Applicant and his wife] would continue to enrich the natural environment, adding to the 100+ native plants we have already planted.*

Staff notes that there is a similar lodging establishment (the Mango Street Inn) located approximately a third of a mile north of the subject property. The Mango Street Inn property is zoned Residential Multi-family (RM) and is within the Mixed Residential future land use category. Bed-and-breakfast inns are also permitted in the RM zoning district by Special Exception.

Analysis:

Concerning how the requested special exception could impact surrounding properties, the Applicant has provided the following narrative:

There would be no negative impact on surrounding properties. The property currently has weekly zone rentals for vacationers (sic), so there is no increase in volume for its seven units as far as vehicle traffic is concerned. The immediate [surrounding] business may see positive increased flow [of patrons]. This exception would be another step forward in taking this property from a rundown, unsafe complex across from an elementary school, to a safe, attractive vacation destination on Fort Myers Beach.

The following section of this report provides analysis of the requests' consistency with the Town's Comprehensive Plan

Consistency of Request with Comprehensive Plan:

The subject property is classified by the Town's Comprehensive Plan as "Boulevard." The category descriptor policy is reproduced below:

*Policy 4-B-5 **"BOULEVARD"**: a mixed-use district along portions of Estero Boulevard including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of the plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land use in this category, and this percentage shall not exceed 70%.*

The subject property is located in an institutional district that includes the library, elementary school, a church, and the Bay Oaks Recreation Campus. The requested activity, a bed-and-breakfast inn, would contribute to a mixed-use environment without increasing the intensity of use beyond what is there today. The visitors brought to the area by the lodging use provide additional customers to support nearby commercial uses, such as those at Seagrape Plaza. Additionally, by renovating the existing c. 1950s structures the Applicant has helped preserve the island's cottage-style architecture and scale.

The proposal is supported by the Community Design Element of the Comprehensive Plan. This element provides a vision for the area: "School Street itself has also become a key connection from the bay to the beach, a palm-lined showcase of restored and new cottages . . . Existing and new infill development on School Street is in the spirit and scale of the Beach's classic cottages..."

The proposal supports Goal 3 of the Comprehensive Plan; to revitalize specific transitional neighborhoods. The subject property lies within the 'Heart of the Island' area identified for redevelopment in Objective 3-A.

The proposal supports Goal 4 of the Comprehensive Plan; "To keep Fort Myers Beach a healthy and vibrant "small town," while capitalizing on the vitality and amenities available in a beach-resort environment...." The scale and design of the proposed bed-and-breakfast inn use support the Beach's small town feel and capitalizes on the locations' close proximity to the Beach; the Gulf Beach Road access is less than a quarter mile to the north and Pompano Street is even closer to the south. The proximity of the subject property to the beach, commercial uses, and surrounding civic amenities allows "...people to move

around without their cars even in the midst of peak-season congestion,” as described in Objective 4-A of the Comprehensive Plan.

Policy 4-C-2 of the Comprehensive Plan addresses “Commercial Intensity.” This policy states that “the maximum intensity of commercial development in any [land use] category may be controlled by height restrictions or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category.” The subject property is located in the “Boulevard” category; however the proposed bed-and-breakfast inn use will not expand or increase the intensity of commercial activity at location. Therefore it is staff’s opinion that there is no conflict with this policy.

Policy 4-C-3 of the Comprehensive Plan provides direction concerning commercial locations for new or expanded commercial uses. The policy states the in the “Boulevard” category, “Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.” The complimentary nature of the requested bed-and-breakfast inn to its surrounding nature is discussed above.

Policy 4-C-3 of the Comprehensive Plan also provides that “The neighborhood context of proposed commercial uses is of paramount importance.” The policy elaborates that the sensitivity of a proposed commercial activity to nearby residential areas can be affected by: they type of activity, its physical scale, and the orientation of buildings and parking.

It is staffs’ opinion that the requested bed-and-breakfast inn is not more intense that the current or previous rental use of the property. The Applicant’s improvements to the property have not enlarged the physical scale of the activity, and have reoriented activity on the site inward to the newly developed pool and patio area. In staff’s opinion the requested bed-and-breakfast inn use will not create an undue commercial intrusion into a residential neighborhood or disturb the “comfort” of adjacent residents.

Special Exception Considerations:

The Land Development Code, in Section 34-88, provides a series of “Considerations” that Town Council will consider when deciding on a special exception application, whenever applicable. These Considerations are discussed in order below:

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

The subject property has been used as combination of short-term rental units for at least the past decade. However the Applicant’s improvements to the property have changed its condition and the cliental it attracts. This constitutes changed conditions that make approval of the request appropriate. Furthermore, the requested special exception would provide a more stable basis for the continued use of the property and provide allowances that would enhance the quality of the rental establishment.

b. The testimony of any applicant.

The Council will be able to hear from the applicant at the public hearing.

c. The recommendation of staff and of the local planning agency.

The staff and LPA recommendations are contained in this staff report.

d. The testimony of the public.

The public testimony at the LPA public hearing is contained in the attached LPA meeting minutes. The public will have the opportunity to testify at the Town Council public hearing.

e. 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.

Based on the analysis provided in the “Consistency of Request with Comprehensive Plan” above it is staff’s opinion that the requested Special Exception is consistent with the Fort Myers Beach Comprehensive Plan.

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

The subject property is located in a mixed-use land use category, “Boulevard,” and surrounded by institutional uses. The discussion of compatibility with Comprehensive Plan Policy 4-C-3 above addresses the ability of the proposed use to meet or exceed what locational standards apply. Compatibility of the proposed use and ability to meet the applicable zoning regulations are discussed in items *h* and *i* below.

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

The subject property is fully developed and contains no environmentally critical areas or natural resources to protect, conserve, or preserve. The proposed bed-and-breakfast inn will have no negative effects on environmentally critical areas and natural resources. The property is currently developed and the Applicant has improved, and plans to continue improving, the open space areas of the property with extensive plantings of native species.

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

The proposed bed-and-breakfast inn will not cause damage, hazard, nuisance, or other detriment to persons or property. The property is uniquely situated for lodging use; surrounded by institutional uses, near the Seagrape Plaza commercial center, in close proximity to two public beach accesses, and a reasonable walk or short bike ride to the Downtown / Times Square area.

The pool and patio area of the site, where outdoor activity is concentrated, are oriented to the center of the property. The distance from the pool/patio area to nearest off-site residence is approximately 45 feet. The owner/resident of this property has provided a letter in support of the Applicant's request, see Exhibit J.

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

The proposed bed-and-breakfast inn is in compliance with the RC zoning district and is being proposed as a special exception consistent with LDC Section 34-622 and Use Table 34-1. Compliance or ability to comply with the supplemental regulations pertaining to bed-and-breakfast inns is addressed below:

Division 19, Article IV, Chapter 34 of the LDC provides a definition of and standards for bed-and-breakfast inns. The definition is reproduced below:

Bed-and-breakfast inn means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings.

The subject property currently contains seven dwelling units. Six of these units are rented. The Applicant and his wife live on-site in the seventh.

Division 19 further specifies that proposed bed-and-breakfast inns must meet the following requirements:

- (1) *Be licensed as transient public lodging establishment with the Florida Department of Business and Professional Regulation; and*
The Applicant is currently licensed.
- (2) *Pay the levied tourist development tax promulgated by the county and the state sales tax; and*
The Applicant currently pays these taxes.
- (3) *Provide and staff a front desk during regular business hours to arrange for the rental of guest units*
The Applicant can comply with this requirement if the Special Exception is approved.
- (4) *Guest units may not be occupied by the same guest for more than 60 days in a year.*
Please refer to discussion of LDC Sec. 34-1805 below.

Additionally:

Individual guest units in a bed-and-breakfast inn must be at least 120 square feet in size.

The smallest unit available at Myerside is approximately 504 square feet.

The intensity of bed-and-breakfast inns shall be calculated in the same manner as for hotel/motels, except that inns with three or fewer guest rooms per building are exempt from the requirement to use equivalency factors to measure density.

Based on the size of the existing dwelling units and the subject property, and the and the applicable future land use category the intensity calculation results 12 guest units, when the Platted Overlay is taken into consideration, or 7 guest units if the Platted Overlay is ignored.

Bed-and-Breakfast inns must supply a minimum of one off-street parking space for each guest room plus one space for the owners' quarters.

The subject property can accommodate up to 12 off-street parking spaces. This exceeds the seven that are required.

LDC Sec. 34-1805 provides additional regulations specific to bed-and-breakfast inns:

(a) Whenever guests are present, the owner or operator must live on the premises or on abutting property, or if the inn is in a cluster of separate buildings the owner or operator must live in one of the buildings.

The Applicant and his wife currently live on-site.

(b) The maximum continuous length of stay for guests is 90 days.

Note: This differs from the previously stated limitation of 60 days.

The Applicant can comply with this regulation if the special exception request is granted.

(c) Each guest unit must be accessed by a common corridor or outside door rather than through another guest unit or dwelling unit.

All the rental units at Myerside are accessed through outside doors.

(d) Food service is limited to breakfast and/or snacks and may be served only to overnight guests.

Myerside currently provides snacks and basic sundries to guests by way of baskets that are provided in their units. The Applicant plans to add breakfast items to these baskets if the special exception request is granted and has indicated that a catered breakfast may be provided in the future.

(e) A single non-illuminated identification sign up to four square feet in area may be mounted onto each building.

The Applicant will comply with this regulation if the special exception request is granted.

As evidenced by the responses provided above, the subject property meets or has the potential to meet the LDC requirements for bed-and-breakfast inns.

Special Exception Findings and Conclusions:

The Land Development Code, in Section 34-88, provides a series of *Findings* that Town Council must make before granting any special exception. The Town Council must find that the applicant has demonstrated that the requested special exception:

- a. Complies with the Fort Myers Beach Comprehensive Plan.
- b. Complies with the Land Development Code.
- c. Complies with other applicable town ordinances or codes.

Staff recommends that the Town Council find that the applicant **has** demonstrated that the requested special exception complies with both the Town's Comprehensive Plan and the Land Development Code. Town Council has the "Authority" to deny the request if Council finds "that granting the special exception is contrary to the public interest and the health, safety, comfort, convenience, and welfare of the citizens of the town".

III. STAFF RECOMMENDATION

Staff recommends **APPROVAL WITH CONDITIONS** of the requested special exception.

RECOMMENDED CONDITIONS OF APPROVAL

Staff recommends that approval of the special exception be subject to the following conditions:

1. *All outdoor lighting on the site will be "fully shielded" or "full cutoff" fixtures to reduce glare and light trespass onto adjacent properties.*
2. *Outdoor activities will be limited to between the hours of 7 AM to 10 PM, unless associated with a special event permit issued by the Town of Fort Myers Beach.*

V. LPA REVIEW & RECOMMENDATION

Community Development staff presented the special exception request for a bed and breakfast at 131-151 School Street, covering the LDC considerations and the required findings. The applicant briefly addressed the LPA noting that the project was a labor of love; when they first acquired the property it was a mess, but they saw an opportunity and despite the challenges have worked towards improving the property. Their special exception request is another step in that process. They are invested in the community and want to comply with regulations.

No members of the public addressed the LPA concerning this request.

The LPA asked several questions concerning such topics as the limitation on how long guests are permitted to stay, the differences between b&b's and hotels/motels, school board input on the request, visual buffering of the pool activity on the site from the elementary school, consumption on premises, appropriate types of special events, and pending code violations.

Staff and the applicant addressed the LPA's queries noting that length of stay is regulated by the LDC, the differences between b&b's and hotels/motels include length of stay and requirement that b&b live on site when guests are in residence, the ability of the b&b's to obtain temporary COP for special events, staff's recommendation to restrict outdoor activities on the site to the hours of 7AM to 10AM. With regard to pending code violations, staff conveyed that the special exception request is the method by which the outstanding code violation may be resolved. A use permit is required to resolve the code violation and a use permit cannot be issued for a b&b without approval of the requested special exception.

The LPA moved to recommend to Council that the special exception for a bed and breakfast be approved with conditions as stated with regards to lighting, outdoor activity hours and a third conditioning approval to the presented site plan of the existing seven units: six rental units and one residential unit. The motion was unanimously supported by the members present (5-0).

****After the January 12, 2016 LPA meeting, staff discovered incorrect information regarding the minimum length of stay permitted for b&b's was conveyed to the LPA. Although, the RC zoning district restricts the rental of lodgings to periods of one week or longer, this restriction applies to *dwelling units*. B&Bs by definition are permitted overnight (nightly) rentals. This correction was presented to the LPA at the February 9, 2016 meeting. The LPA discussed the difference in nightly and weekly rentals and concluded that the difference would not change their previous recommendation of approval as conditioned.**

IV. CONCLUSION

Staff recommends **APPROVAL** of the requested special exception conditioned as follows:

Exhibits:

- A – Site Survey/Plan and Aerial
- B – Subdivision Plat
- C – Property Assessor Field Cards
- D – Lee County Resolution Z-72-18
- E – ZVL2013-008
- F – Property Improvement Pictures
- G – CE15-0344
- H – Application Materials
- I – Lee County Sheriff's 2014-2015 Incidents Report for Subject Property
- J – Letter of Support
- K – January 12, 2016 LPA Meeting Minutes

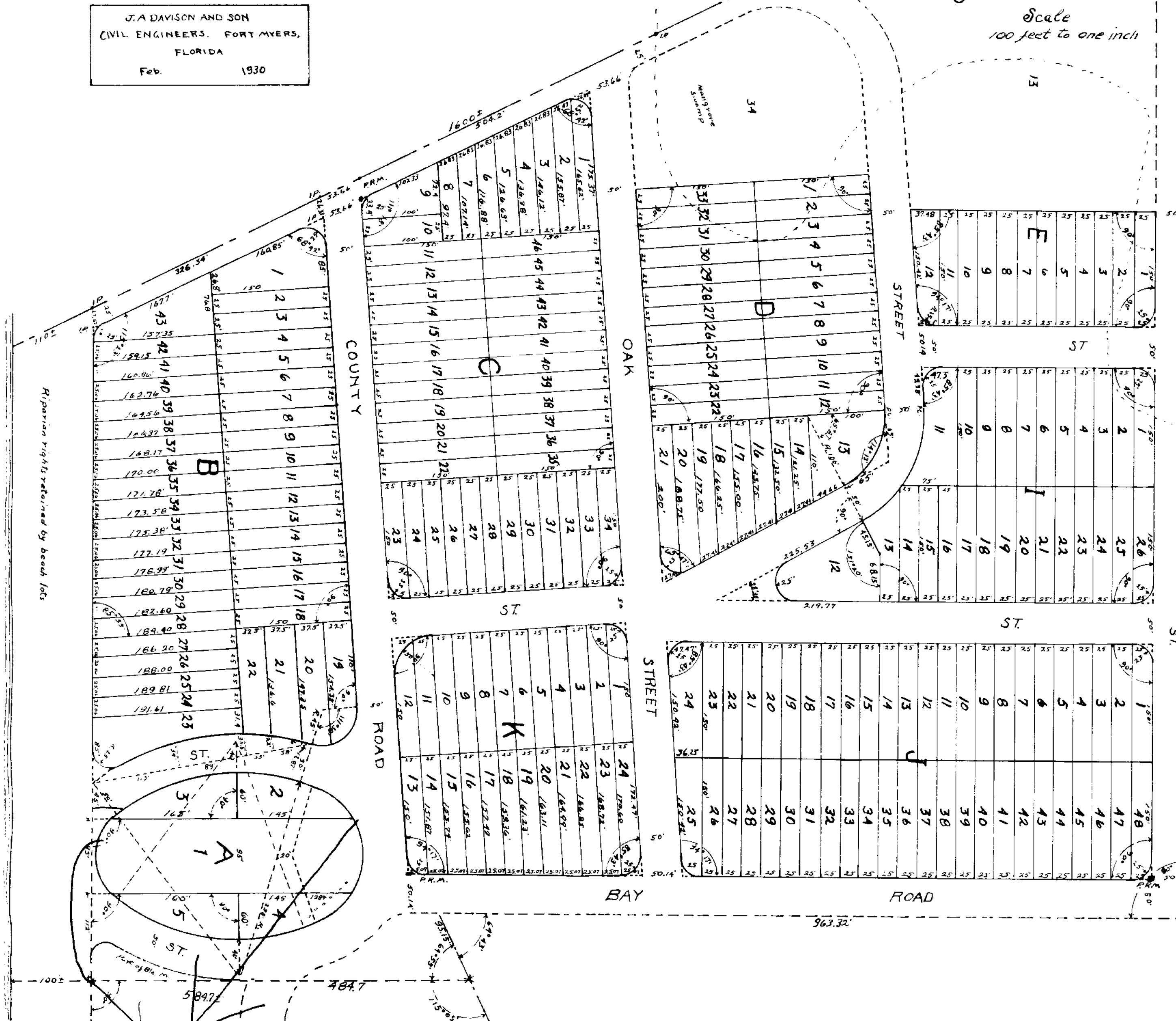
Exhibit A. Aerial View of 131-151 School Street & Site Plan



FIELDBOOK 203 PAGE 40 DATE 1/7/14		SECTION 19 ,TWP 46 S, RGE 24 E	
NORTH ARROW 4	FOUNDATION LOCATION	FIELDBOOK	PAGE
LEGAL DESCRIPTION (AS PROVIDED BY CLIENT) This is a boundary survey of the following : Lots 29 through 34, Block C, Winkler Subdivision as recorded in Plat Book 8, Page 45 of the Public Records of Lee County, Florida. The property address is 131, 145, 147 & 151 School St. per County Records.		LEGEND ■ SET CONC. MON. WCAP I.D.# 3553 ○ SET IRON PIN WCAP I.D.# 3553 □ FD. CONC. MON. WCAP □ FD. CONC. MON. ○ FD. IRON PIN ○ ASSUMED ELEVATION ▲ BENCHMARK R RECORDED M MEASURED CONT REVERSE SIDE FINAL SURVEY DATE	
SCALE 1" = 30'			
NOTES - REPRODUCTION OF THIS SKETCH IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL. - NO INSTRUMENTS OF RECORD REFLECTING EASEMENTS, RIGHTS-OF-WAY, AND OR OWNERSHIP WERE FURNISHED THIS SURVEYOR EXCEPT AS SHOWN. - NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED. - BEARINGS SHOWN HEREON ARE BASED ON <u>Angles are field measured</u> - THIS PROPERTY LIES IN FLOOD ZONE AE EL 12 & 13 NAVD88 PER F.I.R.M. PANEL NO. 12071C0554F DATED 8/28/2008 - LAST DATE OF FIELDWORK 1/7/14 - ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF. CERTIFICATE I hereby certify that the above described property was surveyed under my direction and the sketch of survey is true and correct to the best of my knowledge. This survey meets or exceeds the minimum technical standards set forth by the Florida Board of Land Surveyors, pursuant to Rule 61G17 - 6 Florida Administrative Code, and pursuant to Section 472.027 Florida Statutes. There are no visible encroachments other than those shown hereon. P.L.S. MARK O. ALLEN P.L.S. #3553 LB #6558			
MARK O. ALLEN, INC. PROFESSIONAL LAND SURVEYOR			
FAX: (239) 992-6070 TELE: (239) 992-8900		10602 WOODS CIRCLE BONITA SPRINGS, FL 34135	
DWN. BY MG	CHKD BY	ORDERED BY Beverly Milligan	SHEET 1 OF 1 DWG. NO. 2014-3

WINKLER SUBDIVISION.

J. A. DAVISON AND SON
CIVIL ENGINEERS. FORT MYERS,
FLORIDA
Feb. 1930



Vacation of street lies in limits
of tract marked Block X in PB 12
Pg.6
CCMB:16 Page:88&89

69226
CLERK OF THE OFFICE OF THE
Clerk of the Circuit Court,
LEE COUNTY, FLA.
26 MAR 1930
1930
J. D. Garner
Clerk of the Circuit Court

Exhibit C. Property Assessor Field Cards

LEE COUNTY, FLORIDA

DATE OF SALE	AMOUNT	EX. & PG. NO.	OWNER'S NAME	ADDRESS	DESCRIPTION
			KOCH, PAULINE FT. MYERS BEACH, FLA. 278742	145 SCHOOL ST.	WINKLERS SUBD. BLK C PB 8 PG 45 LOTS 29,30
2/2/68		000009	Mulloy, Edward J & Ida	145 School St FT. MYERS BEACH FLA 33931	
			19-46-24-02-0000C.0290		
			MULLOY EDWARD J + IDA 2160 SAN CARLOS BLVD FT. MYERS BEACH, FLA. 33931		
			BATCH 00009 03/31/77		

FACTOR	1971	1973	1974	1978
LAND	730	5630	5630	7500
BLDG	11220	4220	6000	6000
TOTAL	5530	9850	11630	13500

[illegible]

NOTES	OUTLOC.	TYPE	DESCRIPTION & SIZE	AREA	RATE	VALUE	ACCRED DEPR.	APPRAISED VALUE	BASE BLDG. AREA	(1)	(2)	(3)	(4)
58 1761 All 1500	1	stor	1 st Flr 8x8	64	4.25	256	15%	220	BASE BLDG. PRICE	324	324		
57 218 142 3210	2				7.32	1168	25%	350	FACTOR	12.81	23.44		
V/C 11/77 27	1								BASE VALUE	1.02	1.02		
	3								FIREPLACE!	1233	2746		
		CLASSIFICATION	CODE	NO. OF ACRES	RATE	VALUE	DISC.	APPRAISED VALUE	LANDING				
		7500' @		1.00					TOTAL ADJTS.				
				1.75		5625		5630	OTHER	7500	1493		
									TOTAL	5050	9239		
									GRADE	6-10	6-10		
									GRAIN DIFFER.	90	90		
		FRONTAGE	DEPTH	FACTOR	EQUIV. FRONT	UNIT PRICE	VALUE	INFL.	DISC.	APPRAISED VALUE			
		1-	50	1.50	750	2.5	1875			1230			
									SCURD. VALUE		8315		
									NORMAL DEPR.				
									ACCRED DEPR.	12%	32%		
									APPRAISED VALUE		5650		

R.

1 19 46 24 02 C.031

MAP NO. 10564 25 TOP. 100 JATA. 4000000000

[illegible]

2. FOUNDATION	
HOME	
FOOTING	
PILING	(1-10)
SLAB	
PIERS	(1-4)
WALL	
WOOD	
C.B.	
TYPE	

3. BASEMENT
FLOOR
DIRT FLO. (L-0)
CONCRETE FLR.
DUMP AREA
UTILITY AREA
LIVE AREA (1124)
ENTRY

1. CONSTRUCTION
WOODS
STUPE
P.P.C
FRAME
POSTS
C.B
TILE
BRICK
STONE
FIREPROOF
SEMI-FIREPROOF
PAVE
NOTES

TA, EXCELO
UNFINISHED
PAINTED
STUCCO
MRS. A. THO
HORN, SUND
VEN. SUND
COW, BRICK
FACE BRICK
SYNCH
COMPOSITION
GL
ALUMINUM
ASBESTOS
WOOD
ROCK
SHEET
SHINGLES
HOPE

3. ROOF
 WOOD SHAKE
 STEEL FRAMING
 GUTTER
 FLAT
 SLOPE
 GUTTER
 HIPS (+1)
 EAVES (+2)
 RAILING

CORRECTION
COUNCIL FILE (+7)
CLAYTON (+4)
ALLEN (+2)
RILEY (-2)
MURPHY
DUNCANSON
WILKES
G. A. H.
HARRIS

TOTALS
CUMUL. AREA
DETACHED AREA
LIVE AREA (110)
WATERS

PASTURE
CHICKEN COOP
TOTAL NOTES
BATHROOMS
VISUAL APTS (13) *
RM. APT.
RM. APT.
RM. APT.
STORE

WARRANTS
SMITHS
INDUST. ARMS
MOVES

6-17-85 FRANCHISE
A. FL 6043

ONE
SMALLER $\nearrow$ 1-2"
POSSIBLE
HEAVY
MIND

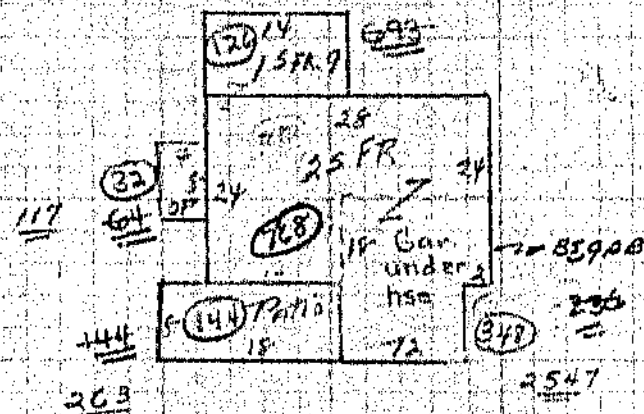
PLATE FRAMING
CONCRETE
ASPHALT TILE
FURNACE TILE
FURNACE

1/2" INT. WALL
 NONE
 UNFINISHED
 PLASTERED
 CEILING
 DRY WALL
 PAINTED
 PAINTED
 SMOOTH MASONRY
 BURNED MASONRY

CEMENT
 DRY WALL
 ACCOUNTING
 PLUMBING
 EXPANDED METAL
 MOTORS
 J. ELECTRIC
 NONE
 NOTES
 7 DECEMBER

NONE
 10 MONTHS 1.4
 M.A. FURN. 1.2
 CIRC. HOT AIR
 HOT WATER
 RADIANT
 FLOOR 1.2
 MOTORS
 (1) RATE * X FLOOR
 (1) FLOOR * 1.2
 F.A. * 1.2
 FLOOR * 1.2
 NONE 1.2

1. FIX. 4 ROOM
2. FIX. 0. H. ROOM
3. FIX. H. ROOM
4. FIX. B. ROOM
5. FIX. E. ROOM
6. FIX. ROOM
LAVATOIR
TILED FLOOR
TILED WALLS
HISTING
TOTAL FIX. 4
TILES DOWN 4
1. 2. 3. 4. 5. 6.
INSULATION
FLOOR ALL FLOOR
K.C. A.C.
FIRE SPOUTS
1. 2. 3. 4. 5. 6.
DOORS



NOTES	UNIT BLDG.	TYPE	DESCRIPTION & SIZE	AREA	RATE	VALUE	ACCUMULATED DEPR.	APPRAISED VALUE	BASE BLDG. AREA	BASE BLDG. PRICE	FACTOR	BASE VALUE	FINES PLACES	PLUMBING	TOTAL ADJTS.	OTHER	TOTAL	GRADE	GRADE DIFFER.	SCHED. VALUE	REMARKS, DEPR.	ACCUMULATED DEPR.	APPRAISED VALUE
56 3-227 ABL 2480	1																						
NY-1907 04	2																						
3/29/41 NY was 212	3																						
4/6 4/77	4																						
		CLASSIFICATION	CODE	NO. ACRES	RATE	VALUE	DISC.	APPRAISED VALUE															
				7500 @ .75	= 5625	= 5625		7500															
		FRONTAGE	DEPTH	FACTOR	EQUIV. FRONT	UNIT PRICE	VALUE	INTL.	DISC.	APPRAISED VALUE													
		1-	50	1.33	53.0					7330													

LEE COUNTY, FLORIDA

1 19 46 24 02 C.033
 MAP NO. SEC. TWP. RGE. AREA PARCEL NUMBER

DATE OF SALE	AMOUNT	BK. & PG. NO.	OWNER'S NAME	ADDRESS	DESCRIPTION
			KOGH, PAULINE FT. MYERS BEACH, FLA. 28117	145 SCHOOL RD.	WINKLERS SUBD. BLK C PB 8 PG 45 LOTS 33, 34
03/1/78	00456.972		Mulloy, Edward J. + Ida	145 School St FT. MYERS BEACH FLA 23931	
			19-46-24-02-0000C.0330		
			MULLOY EDWARD J + IDA 2160 SAN CARLOS BLVD FT. MYERS BEACH, FLA. 33931		
			BATCH 00009 03/31/77		

FACTOR	1970	1971	1972	1973	1974	1977	1978
YEAR	1970	1971	1972	1973	1974	1977	1978
LAND	1330	1330	5670	5630	5630	7500	
QUOTES	13940	16780	16780	27560	33500	33500	
TOTAL	15270	18110	22410	33190	39130	41000	

15-2280122
1576222

136
SUB

18

57

1596

REST
STR

798 = 6% "47PR"

STANGE

2370

1907

215

115

215P

10

28

798

4581

TRI-PLEX 24
14

Final
1-17-70

5/5/70

[illegible]

2

RESOLUTION Z-72-18

The following resolution was offered by Commissioner Jim Sweeney, and seconded by Commissioner Kenneth Daniels, and upon poll of the members present the vote was as follows:

Julian Hudson	Aye
Walter Shirey	Aye
Jim Sweeney	Aye
Kenneth Daniels	Aye
Bruce Scott	Aye

WHEREAS, Edward & Ida Mulloy have requested a variance in an RU-2 zone, for an apartment under duplex for personal home use.

Lots 33 and 34, Block C, Winkler Subdivision, Plat Book 8, Page 45, Section 19, Township 46S, Range 24 East.

WHEREAS, a Public Hearing of the Lee County Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering adjacent areas, the Zoning Board recommended that the petition be approved for a Variance in an RU-2 zone to allow an apartment under a duplex.

WHEREAS, this Board after reviewing the records and recommendations of the Zoning Board and having given an opportunity for all interested persons to be heard after being duly sworn according to law, and upon due and proper consideration having been given to this matter does hereby uphold the findings of the Zoning Board.

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners, Lee County, Florida, that the decision of the Zoning Board to approve a Variance in an RU-2 zone to allow an apartment under a duplex, be upheld, and said property is zoned accordingly.

PASSED AND ADOPTED this 1st. Day of February, 1972.

Record December 27, 1971

71-12-8



Town of Fort Myers Beach

Alan Mandel
Mayor

Joe Kosinski
Vice Mayor

Dan Andre
Council Member

Jo List
Council Member

Bob Raymond
Council Member

April 25, 2013

George W. Ganim
4666 Main Street
Bridgeport, Connecticut 06606

RE: 147 School Street

Dear Mr. Ganim,

In response to your request for a Zoning Verification Letter submitted April 10, 2013, be advised that the property located at address **147 School Street**, legally described as Lots 29 through 34, Block C, of that subdivision known as Winkler's Subdivision, as recorded in the Public Records of Lee County, Florida in Plat Book 8, Page 45, (hereinafter "subject property") is zoned RC (Residential Conservation) according to the Official Zoning Map of the Town of Fort Myers Beach. The subject properties are located within the Boulevard category on the Future Land Use Map (FLUM) in the Fort Myers Beach Comprehensive Plan. Lots 33 and 34 of the property were granted a variance in 1972 by Lee County, in Resolution Z-72-18 (attached), to allow an apartment under a duplex.

Please note that the Fort Myers Beach Land Development Code and Comprehensive Plan are available online at www.fortmyersbeachfl.gov/index.aspx?NID=180 for your reference. Paper copies of both documents are also available at Town Hall for a fee.

As stated above, the subject property is located within the RC zoning district (*See Figure A*). The Town of Fort Myers Beach Land Development Code (LDC) defines the RC zoning district, in Section 34-642, and describes its purpose as to "designate suitable locations for motels, resorts, and related services." The RC district has 'limited' land uses in the Residential and Lodging categories, and 'Restricted' land uses in the Office, Marine and Civic use categories. For a complete and comprehensive list of allowable uses see LDC Table 34-1.

Table 34-3 of the LDC lists the following property development dimensions for the RC district:

SETBACKS

Street	25'
Side	7.5'
Rear	20'
Water body	25'

Maximum Height	25' (as measured from Base Flood Elevation)
Maximum # of Stories	3 (includes ground level for parking/storage)
Minimum Lot Width	45'
Minimum Lot Depth	80'
Minimum Lot Area	4,000 square feet
Maximum Building Coverage	40%

The subject property consists of six platted lots, each approximately 25 feet in width and 150 feet in depth. These lots are not large enough to be developed individually, but they could be developed in three pairs of two lots. The three pairs would be 50 feet by 150 feet in size, and could be deemed lots of record, therefore the requirements of LDC Sec. 34-3273 shall apply. A residential building may be placed on a single nonconforming lot provided the lot has at least 40 feet in width, 75 feet in depth, and 4,000 square feet in area. Street and waterbody setbacks for the zoning district (as listed above) remain in effect, but side setbacks are 10% of the lot width or 5 feet, whichever is greater. Rear setbacks shall be 25% of lot depth, or 20 feet, whichever is smaller.

The Boulevard future land use category (*see Figure B*) is defined in the Town of Fort Myers Beach Comprehensive Plan as a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in the Comprehensive Plan and meet the design concepts of the plan and the LDC.

The statements contained herein are provided for your convenience and only verify information that could be discovered by an average citizen consulting publicly available documents and/or documents you have provided. This zoning verification letter is not an interpretation of the Fort Myers Beach Land Development Code or the Fort Myers Beach Comprehensive Plan, and is not a development order, development permit, or action by the Town of Fort Myers Beach. If you require action by the Town of Fort Myers Beach, apply for a development permit, administrative action, or public hearing as provided in the Fort Myers Beach Land Development Code.

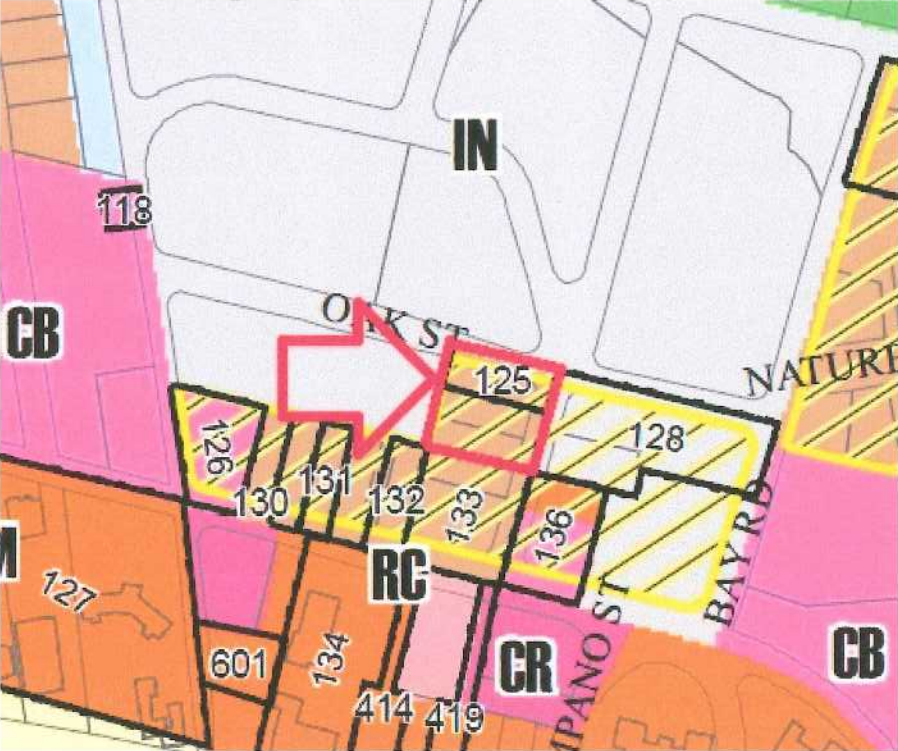
Please be aware that the information provided herein is based on current regulations and can be subject to change with enactment or amendment of ordinances. If you have any further questions, please contact our office.

Sincerely,



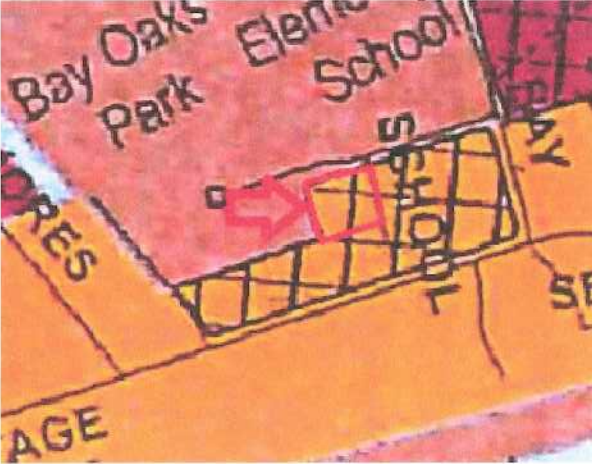
Josh Overmyer, CFM
Planning Coordinator
Department of Community Development
Town of Fort Myers Beach

Exhibit A – Zoning Map

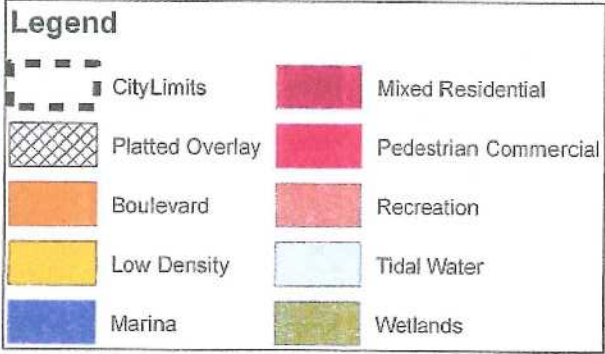


Brown indicates RC (Residential Conservation) and the yellow cross-hatching signifies the Platted Overlay from the Comprehensive Plan

Exhibit B – Future Land Use Map



Town of Fort Myers Beach



RESOLUTION Z-72-18

The following resolution was offered by Commissioner Jim Sweeney, and seconded by Commissioner Kenneth Daniels, and upon poll of the members present the vote was as follows:

Julian Hudson	Aye
Walter Shirey	Aye
Jim Sweeney	Aye
Kenneth Daniels	Aye
Bruce Scott	Aye

WHEREAS, Edward & Ida Mulloy have requested a variance in an RU-2 zone, for an apartment under duplex for personal home use.

Lots 33 and 34, Block C, Winkler Subdivision, Plat Book 8, Page 45, Section 19, Township 46S, Range 24 East.

WHEREAS, a Public Hearing of the Lee County Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering adjacent areas, the Zoning Board recommended that the petition be approved for a Variance in an RU-2 zone to allow an apartment under a duplex.

WHEREAS, this Board after reviewing the records and recommendations of the Zoning Board and having given an opportunity for all interested persons to be heard after being duly sworn according to law, and upon due and proper consideration having been given to this matter does hereby uphold the findings of the Zoning Board.

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners, Lee County, Florida, that the decision of the Zoning Board to approve a Variance in an RU-2 zone to allow an apartment under a duplex, be upheld, and said property is zoned accordingly.

PASSED AND ADOPTED this 1st. Day of February, 1972.

Heard December 27, 1971

71-12-8

Exhibit F. Before and After Renovations Pictures







Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: (239) 765-0202 Fax: (239) 765-0591

8/27/2015

**MYERSIDE LLC
PO BOX 232
FORT MYERS BEACH FL 33932**

CASE NUMBER: **CE15-0344**

Certified Mail: **7014 2870 0000 6232 3724**

SITE ADDRESS: **131-151 SCHOOL ST**
PARCEL STRAP NO: **194624W30020C0290**

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on **8/26/15** by Town of Fort Myers Beach Code Enforcement Officer **MOLLY JACOBS** indicates that the following items are a violation:

- ***Units are being marketed as available for daily rental.***
- ***Pool barrier fence has been installed; however the permit, number FNC15-0006, is still under review.***
- ***Units have been remodeled; however the remodel permit, number BLD14-0017, is still under review.***
- ***A change of use for buildings located on 131 thru 151 School Street.***

These items are a violation of the following Town Codes:

Town of Fort Myers Beach Land Development Code

- ***This property is zoned RC (Residential Conservation) which is a Limited use, allowing rental of any permitted dwelling unit to a single family for periods of one week or longer (see Sec. 34-2391-2410 for rules)***
- ***Sec. 6-111 Adoptions; amendments, adopting the Florida Building Code as amended. Florida Building Code section:
105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.***



Town of Fort Myers Beach

CODE COMPLIANCE

2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: (239) 765-0202 Fax: (239) 765-0591

You are hereby directed to abate or remedy these violations on or before **9/15/15**.

The violation(s) can be abated or corrected by taking the following actions:

- ***Dwelling units may not be rented less than a week***
- ***Obtain a USE permit and pass all subsequent inspections***
- ***Obtain a fence permit and pass all subsequent inspections***
- ***Obtain a remodel permit and pass all subsequent inspections***

ONCE YOU HAVE ABATED OR CORRECTED THE VIOLATIONS, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED BY A CODE OFFICER TO VERIFY THAT THE VIOLATION(S) HAVE BEEN ABATED OR CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) abated and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 765-0202 if you have any questions concerning this Notice of Violation.

Respectfully,

MOLLY JACOBS
Code Enforcement Officer
Town of Fort Myers Beach



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, eleven (11) copies and one digital/electronic copy* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application.

PROJECT NUMBER: SE22015-0006 DATE: 11/24/15

Site Address: 145 School ST- FT. MYERS BEACH 33931

STRAP Number: 1A-46-24W30020C0290

Applicant: Roland Weinmann (Myerside) Phone: 239-765-0297

Contact Name: Roland Weinmann Phone: 239-314-8009

Email: roland@myerside.com Fax: _____

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Boulevard

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

ACTION REQUESTED

- ☒ Special Exception
- ☐ Variance
- ☐ Conventional Rezoning
- ☐ Planned Development ☐ Commercial ☐ Residential
- ☐ Master Concept Plan Extension
- ☐ Appeal of Administrative Action
- ☐ Vacation of Platted Right-of-way and Easement
- ☐ Other - cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

- PH-A
- PH-B
- PH-C
- PH-D
- PH-E
- PH-F
- PH-G
- attach on separate sheet

FIELDBOOK 203 PAGE 40 DATE 1/7/14		SECTION 19 ,TWP 46 S, RGE 24 E	
NORTH ARROW 4	FOUNDATION LOCATION	FIELDBOOK	PAGE
LEGAL DESCRIPTION (AS PROVIDED BY CLIENT) This is a boundary survey of the following : Lots 29 through 34, Block C, Winkler Subdivision as recorded in Plat Book 8, Page 45 of the Public Records of Lee County, Florida. The property address is 131, 145, 147 & 151 School St. per County Records.		LEGEND ■ SET CONC. MON. WCAP I.D.# 3553 ○ SET IRON PIN WCAP I.D.# 3553 □ FD. CONC. MON. WCAP □ FD. CONC. MON. ○ FD. IRON PIN ○ ASSUMED ELEVATION △ BENCHMARK R RECORDED M MEASURED CONT REVERSE SIDE FINAL SURVEY DATE	
SCALE 1" = 30'			
NOTES - REPRODUCTION OF THIS SKETCH IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL. - NO INSTRUMENTS OF RECORD REFLECTING EASEMENTS, RIGHTS-OF-WAY, AND OR OWNERSHIP WERE FURNISHED THIS SURVEYOR EXCEPT AS SHOWN. - NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED. - BEARINGS SHOWN HEREON ARE BASED ON <u>Angles are field measured</u> - THIS PROPERTY LIES IN FLOOD ZONE AE EL 12 & 13 NAVD88 PER F.I.R.M. PANEL NO. 12071C0554F DATED 8/28/2008 - LAST DATE OF FIELDWORK 1/7/14 - ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF. CERTIFICATE I hereby certify that the above described property was surveyed under my direction and the sketch of survey is true and correct to the best of my knowledge. This survey meets or exceeds the minimum technical standards set forth by the Florida Board of Land Surveyors, pursuant to Rule 61G17 - 6 Florida Administrative Code, and pursuant to Section 472.027 Florida Statutes. There are no visible encroachments other than those shown hereon. P.L.S. MARK O. ALLEN P.L.S. #3553 LB #6558			
MARK O. ALLEN, INC. PROFESSIONAL LAND SURVEYOR			
FAX: (239) 992-6070 TELE: (239) 992-8900		10602 WOODS CIRCLE BONITA SPRINGS, FL 34135	
DWN. BY MG	CHKD BY	ORDERED BY Beverly Milligan	SHEET 1 OF 1 DWG. NO. 2014-3

PART I - General Information

A. Applicant*: Roland Weinmann Phone: 239-314-8009

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 145 School ST. FT. MYERS BEACH FL. 33931

Email: roland@myerside.com Fax: _____

Contact Name: Roland Weinmann Phone: 239-314-8009

B. Relationship of Applicant to subject property:

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

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

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

Name: Roland Weinmann Phone: 239-314-8009

Address: 145 School ST. Ft. Myers Beach 33931

Email: roland@myerside.com Fax: _____

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

Name: Beverley Milligan Phone: 239-529-8785

Address: 145 School St. Ft. Myers Beach 33931

Email: bev@myerside.com Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

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

PART III - Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership

- ☐ Single Owner (individual or husband and wife)
- Name: _____ Phone: _____
- Mailing Address: _____
- Email: _____ Fax: _____

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

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 4-1
- ☐ Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 19-46-24-W3-0020C.0290

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

Name and Address	Percentage Ownership

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

Name, Address and Office	Percentage of Stock
<u>Roland Weimann</u>	
<u>145 School ST. Ft. Myers Beach 33931</u>	<u>51 %</u>
<u>3333</u>	
<u>Beverley Mulligan</u>	
<u>145 School ST. Ft. Myers Beach 33931</u>	<u>49 %</u>

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

Name and Address	Percentage of Interest

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

Name and Address	Percentage of Ownership

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

Name, Address and Office	Percentage of Stock

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

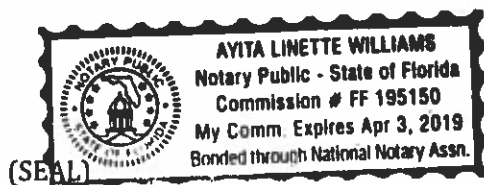
The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.


Signature

Roland Weinmann
Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 11-24-15 (date) by Roland Weinmann (name of person providing oath or affirmation), who is personally known to me or who has produced personally known (type of identification) as identification.




Signature

Ayta Linette Williams
Printed Name

PART V - Property Information

A. Legal Description:

STRAP: 19-46-24-W3-0020C.0290

Property Address: 131-151 School ST. FT. MYERS BEACH 33931

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

☒ Yes. Property identified in subdivision: Winklers

Book: 8 Page: 45 Unit: _____ Block: C Lot(s): 2A-34

B. Boundary Survey:

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

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 150 feet

Depth (please provide an average width if irregular in shape) 150 feet

Frontage on street: 300 feet. Frontage on waterbody: 0 feet

Total land area: 21,778.00 ☐ acres ☒ square feet

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

School ST. connects with Estero Blvd. approx. 1 mile south of Big Carlos Pass Bridge. Across from Town Library

☒ Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

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

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

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

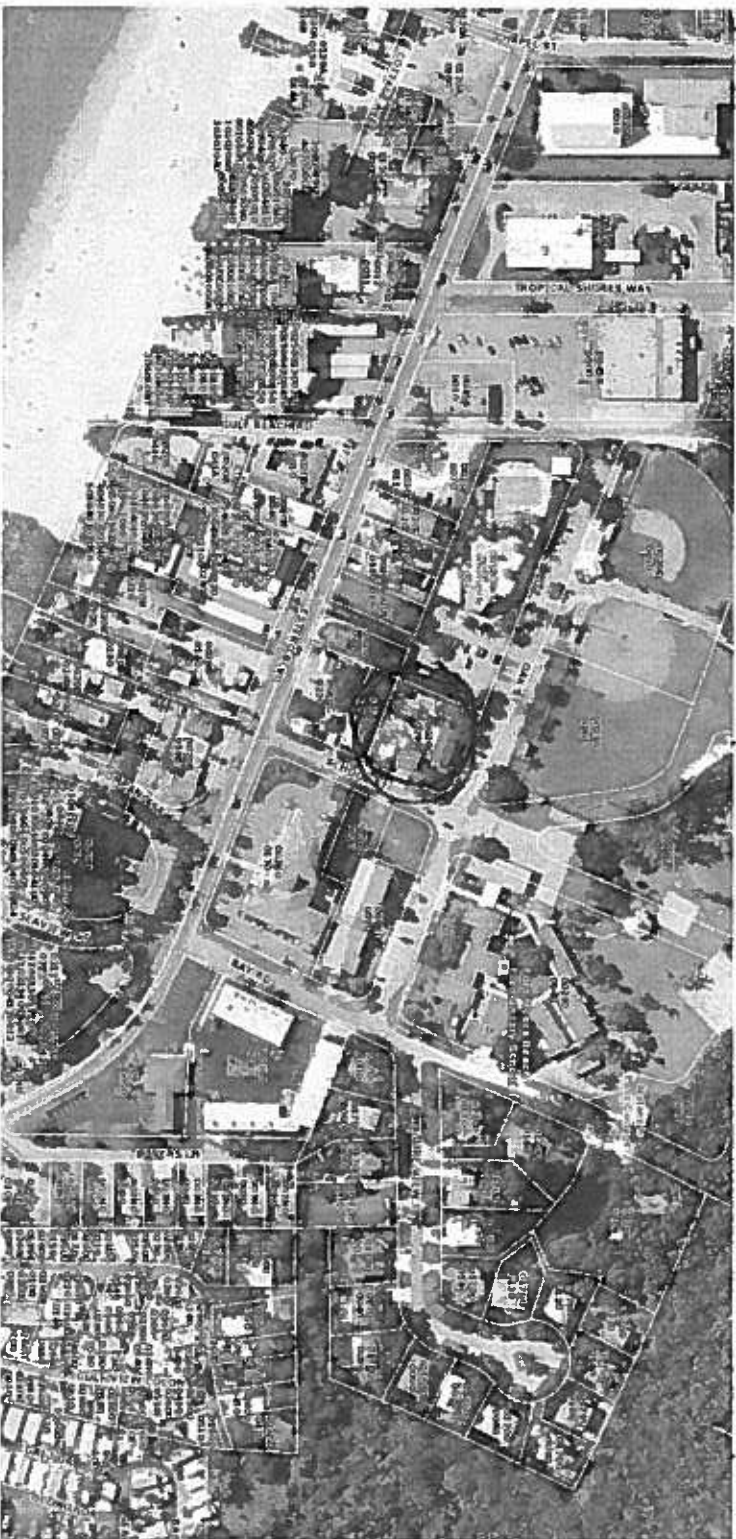


Exhibit S-3

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

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.
- ☒ Attach a map showing the surrounding property owners as Exhibit 5-7.
- ☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

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

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

H. Zoning (see official Zoning Map):

- | | |
|---|--|
| ☐ RS (Residential Single-family) | ☐ CF (Community Facilities) |
| ☒ RC (Residential Conservation) | ☐ IN (Institutional) |
| ☐ RM (Residential Multifamily) | ☐ BB (Bay Beach) |
| ☐ RPD (Residential Planned Development) | ☐ EC (Environmentally Critical) |
| ☐ CM (Commercial Marine) | ☐ DOWNTOWN |
| ☐ CO (Commercial Office) | ☐ SANTOS |
| ☐ CB (Commercial Boulevard) | ☐ VILLAGE |
| ☐ CR (Commercial Resort) | ☐ SANTINI |
| ☐ CPD (Commercial Planned Development) | |

PART VII

AFFIDAVIT

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

I, Roland Weinmann (name), as Owner (title) of MYERSIDE LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

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

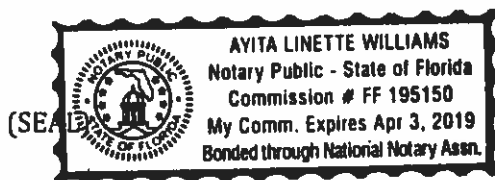
Myerside LLC
Name of Entity (corporation, partnership, LLP, LLC, etc)

[Signature] President
Signature Title

Roland Weinmann Nov. 24 2015
Typed or Printed Name Date

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on Nov. 24, 2015 (date) by Roland Weinmann (name of person providing oath or affirmation), who is personally known to me ~~or who has produced~~ personally known (type of identification) as identification.



Ayita Linette Williams
Signature

Ayita Linette Williams
Printed Name

10/12/2012

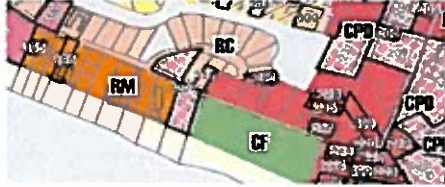
Town of Fort Myers Beach
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

Page 10 of 13

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-A

**Additional Required Information for a
Special Exception Application**

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

Project Name:	Myerside
Authorized Applicant:	Roland Weinmann
LeePA STRAP Number(s):	1A-46-24W 3002 OC 0290

Current Property Status:	
Current Zoning:	RC
Future Land Use Map (FLUM) Category:	Boulevard
Platted Overlay?	☒ yes ☐ no
FLUM Density Range:	10 du./acre

Requested Action:

☐	Use of premises in the EC (Environmentally Critical) zoning district for:
☒	Use of premises in the <u>RC</u> zoning district for:
Bed and Breakfast	

PART I
Narrative Statements

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

Bed and Breakfast

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:

A: There is precedent for this type of exemption on Ft. Myers Beach

B: The property is zoned for weekly rentals, which is well suited for a bed and breakfast

C: The property location, size and layout is well suited to B+B. - Everything is aimed to the center

D: We would continue to enrich the natural environment, adding to the 100+ native plants we have already planted.

Granting the requested Special Exception could impact surrounding properties as follows:

There would be no negative impact on surrounding properties. The property currently has weekly zone, rentals for vacationers, so there is no increase in volume for its 7 units as far as vehicle traffic is concerned. The immediate businesses may see positive increased flow. This exemption would be another step forward in taking this property from a run down, unsafe complex across from an elementary school, to a safe, attractive vacation destination on Ft. Myers Beach.

PART 2

Submittal Requirements

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

Required Items

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.

For New Communication Towers:

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

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

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

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

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

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements:

“Request for...”

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

“The property qualifies for a special exception because...”

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

"Granting the requested special exception could impact surrounding properties as follows..."

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for special exception consist of the Public Hearing form and the supplemental form PH-A. Both parts of the application form must be completed and submitted.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

Exhibit I. LCSO 2014-2015 Incidents Report



Lee County Sheriff's Office

Incidents By Location

Search for **certain closed** incidents reported to the Lee County Sheriff's Office for the **past 2 1/2 years**.

The text you enter to be searched for must be a **street address**. Do not include city or state. If you specify an exact address (number, street name, street type), it will return incidents for **only** that exact spelling/address. If you type part of the address it will return incidents where that sequence of letters appears as **part** of the address, therefore returning more results.

Due to active investigations, incidents will be delayed 48 hours before appearing here.

Total: 294

<u>Occured Date</u>	<u>Incident Type</u>	<u>Address</u>	<u>City</u>	<u>Disposition</u>	<u>Incident Number</u>
2015-12-15 16:21:22	DISTURBANCE	5321 TICE ST; OAK HAMMOCK MIDDLE SCHOOL	FORT MYERS	ARREST/NTA	15-540076
2015-12-16 11:21:55	BURGLARY-BUSIN	18500 THREE OAKS PKY; THREE OAKS MIDDLE SCHOOL	FORT MYERS	REPORT TAKEN	15-541506
2015-12-19 13:47:56	RECOVER VEHICLE	12770 GATEWAY BLVD; GATEWAY CHARTER HIGH SCHOOL	FORT MYERS	REPORT TAKEN	15-547082
2014-03-18 08:37:22	DISTURBANCE	151 SCHOOL ST	FORT MYERS BEAC	REPORT TAKEN	14-105846
2014-04-27 15:25:13	DISTURBANCE	145 SCHOOL ST	FORT MYERS BEAC	CONDITION CORRECTED	14-166712
2014-05-06 22:51:41	DISTURBANCE	SCHOOL ST / ESTERO BLVD	FORT MYERS BEAC	HANDLED BY DEPUTY	14-181262
2014-12-08 19:56:38	DISTURBANCE	OAK ST & SCHOOL ST	FORT MYERS BEAC	CONDITION CORRECTED	14-498798
2015-02-27 18:02:46	INDECENT EXP	151 SCHOOL ST; BAY OAKS REC PARK	FORT MYERS BEAC	GONE ON ARRIVAL	15-086322
	DISTURBANCE				15-261634

2014-02-26 15:45:00			LEHIGH ACRES		
------------------------	--	--	-----------------	--	--

Florida law protects the identity of **victims** in sex crimes and child abuse cases. In accordance with Florida State Statute s. 119.071(2)(h)1. F.S., incidents related to sexual crimes or child abuse will **NOT** be published. Also note, incidents reported to area police departments or other agencies are not available on our website.



Lee County Sheriff's Office

Incidents By Location

Search for **certain closed** incidents reported to the Lee County Sheriff's Office for the **past 2 1/2 years**.

The text you enter to be searched for must be a **street address**. Do not include city or state. If you specify an exact address (number, street name, street type), it will return incidents for **only** that exact spelling/address. If you type part of the address it will return incidents where that sequence of letters appears as **part** of the address, therefore returning more results.

Due to active investigations, incidents will be delayed 48 hours before appearing here.

Total: 294

<u>Occured Date</u>	<u>Incident Type</u>	<u>Address</u>	<u>City</u>	<u>Disposition</u>	<u>Incident Number</u>
2015-07-21 20:28:17	DISTURBANCE	SCHOOL ST / ESTERO BLVD	FORT MYERS BEAC	CONDITION CORRECTED	15-304981
2015-07-22 14:27:16	ANIMAL	SCHOOL ST / ESTERO BLVD	FORT MYERS BEAC	HANDLED BY DEPUTY	15-306263
2015-08-29 15:00:00	RECOVER PROP	SCHOOL ST & ESTERO BLVD	FORT MYERS BEAC	REPORT TAKEN	15-367393
2014-01-07 11:51:03	HARASSMENT	151 SCHOOL ST, A	FT MYERS BEACH	CONDITION CORRECTED	14-008765
2014-02-06 03:00:11	STOLEN VEHICLE	151 SCHOOL ST, CTOR	FT MYERS BEACH	CRIME REPORT TAKEN	14-048469
2014-01-07 08:33:26	DISTURBANCE	200 SCHOOLSIDE DR	LEHIGH ACRES	TRESPASS WARNING ISSUED	14-008421
2014-02-22 03:11:03	DISTURBANCE	303 SCHOOLSIDE DR	LEHIGH ACRES	CONDITION CORRECTED	14-071319
2014-02-24 15:18:22	DISTURBANCE	200 SCHOOLSIDE CT; LEHIGH ELEMENTARY SCHOOL	LEHIGH ACRES	CANCELLED PER COMPLAINANT	14-074608
2014-02-26 08:59:13	DISTURBANCE	715 THOMAS SHERWIN AVE S ; EAST LEE COUNTY HIGH SCHOOL	LEHIGH ACRES	CONDITION CORRECTED	14-076962
	DISTURBANCE	304 SCHOOLSIDE DR		REPORT TAKEN	14-077666

2015-06-24 19:23:32		SCHOOL ST / OAK ST; BASEBALL FIELD	FORT MYERS BEAC	GONE ON ARRIVAL	
2015-06-24 19:41:15	DISTURBANCE	SCHOOL ST / ESTERO BLVD; BASEBALL FIELD	FORT MYERS BEAC	GONE ON ARRIVAL	15-261654

Florida law protects the identity of **victims** in sex crimes and child abuse cases. In accordance with Florida State Statute s. 119.071(2)(h)1. F.S., incidents related to sexual crimes or child abuse will **NOT** be published. Also note, incidents reported to area police departments or other agencies are not available on our website.

Exhibit J. Letter of Support

To: Town of Ft. Myers Beach
Attn.: Town Council &
Planning Commission

December 6, 2015

Re: Special Exception -131-151 School St.

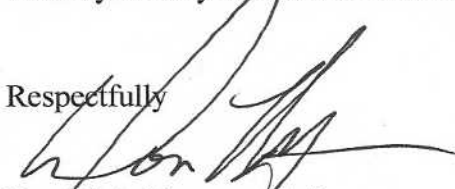
Dear Sirs;

I own the property immediately adjacent to 131-151 School St. I understand the owners of Myerside LLC have applied for a special exemption to have the subject property become a Bed & Breakfast. Over the last two years, I and my tenants have watched as Roland Weinmann and Beverley Milligan, the owners of Myerside LLC have worked to change the subject property from being a drug infested menace to the community to a respectable and beautiful property. Their efforts have rendered the property an asset to the community as opposed to being a liability to all, the neighborhood has become a safer place to live.

For the reasons stated above I believe it to be in the best interest of the community to Grant the exemption requested by Myerside. I strongly encourage all parties involved to vote in favor of the requested exemption.

Thank you for your consideration in this matter.

Respectfully



Donald A. Nyman, G. P.
Nyman Ltd. Partnership, Owner of
2661-6281 Estero Blvd & 125 School Street
Ft. Myers Beach, Fl

Mailing address : 1728 S.E. 40th Terrace
Cape Coral, Fl. 33904



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES
Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Tuesday, January 12, 2016**

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Chair Zuba. Members present: Bruce Butcher, Al Durrett, Suzanne Katt, Jane Plummer, Joanne Shamp, James Steele and Hank Zuba.

Town Attorney: Dawn Lehnert

Staff: Matt Noble and Megan Will.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES - November 17, 2015

Ms. Shamp reviewed unrecorded comments from the November 17, 2015 meeting. She verified that the correct number of current seasonal parking lots was two. Ms. Shamp did not recall the partial motion. Mr. Noble will clarify the cost of a permit.

Under the REORGANIZATION categories, add of the Local Planning Agency and Historic Preservation Board to distinguish between the two.

MOTION: Ms. Shamp moved to approve the minutes as amended, second by Mr. Steele.

VOTE: Motion approved; 7-0.

V. SEZ2015-0006

Obtain a special exception to operate a bed and breakfast inn on the subject property.

Town Attorney Lehnert swore in those providing testimony.

Chair Zuba requested ex parte communication. Mr. Butcher - site visit; Ms. Plummer - site visit; Mr. Durrett - site visit; Chair Zuba - site visit, he spoke to an employee (Gil) and he inspected one of the units; Ms. Shamp - site visit; Mr. Steele - site visit and Ms. Katt - site visit.

Ms. Will reviewed the request and she noted that staff found that it was consistent and supported many of the goals and objectives of the Comprehensive Plan. The applicant chose to restore the existing structures onsite rather than rebuild, they would physically revitalize a transitional neighborhood in the heart of the Island and the scale and design of the site fit with Goal 4 and it was very close to the beach and other amenities. She indicated that increasing commercial intensity on the site was a 0 sum game. There were currently seven legal rentals that could be rented on a weekly basis; as a Bed and Breakfast (BNB) it would have six legal weekly rentals because the owners would live in one of the units. The special exception request came as a result of operating without the correct use permit for a BNB. In order to have an office onsite, they had to be considered a BNB. In order to be considered a BNB, they had to request a commercial use permit.

Ms. Will reported that under special exception considerations, staff contended that improvements made to the property and neighborhood were evidence of changing conditions, which made the request appropriate. Staff found the request was compatible with the surrounding land uses, the closest adjacent single family home provided support for the request and the redevelopment renovation focused the activity inward, which provided a buffer from adjacent properties.

Ms. Will reviewed specific requirements BNBs were required to meet. Staff recommended approval with the conditions that all outdoor lighting would be fully shielded or use full cutoff fixtures to reduce glare and light trespass to adjacent properties and outdoor activities would be limited to the hours of 7 a.m. to 10 p.m. unless associated with a special event permit.

Ms. Plummer questioned why there was a limit (60 to 90 days) on how long guests were permitted to stay. Ms. Will responded that it was a Town regulation, but it could be changed. Ms. Plummer felt it was restrictive for a small business, especially in the summer.

Mr. Butcher questioned the difference between BNBs and hotels/motels. Ms. Will replied that Code differentiated between the two and hotels/motels were open to nightly rentals, unlike BNBs. Owners of BNBs were required to live onsite when guests were present.

Ms. Shamp questioned whether the school commented on the request. Ms. Will stated that she had not received comments. Ms. Plummer stated that Renee Malloy indicated that the school was pleased. Ms. Shamp questioned whether more buffering would be required to prevent a visual passage between the school and pool activity. Ms. Will remarked that the owner intended to increase the landscaping onsite. Ms. Shamp expressed concern regarding Consumption on Premises (COP) on the property. Ms. Will indicated that they would have the ability to request a COP in conjunction with special events under the RC zoning. Ms. Shamp questioned whether there was a way to limit the kind of special events in order to limit the impact to the school and the park. Ms. Will noted that staff recommended restrictions on outdoor activities.

Chair Zuba questioned whether there were pending code violations. Ms. Will replied that there was an outstanding code case on the property in relation to obtaining a permit for the fence, which had been obtained and was final. Some of the remodeling activities were pending completion. The CO had been issued for all units in the complex. If the special exception was approved, they would be allowed to make an application for the commercial use permit. Once the application was submitted and staff reviewed it, inspections by the fire department, code inspection and building inspection would have to be passed.

Roland Weinmann and Beverly Milligan thanked staff for the fantastic job they did. Ms. Milligan stated that it was a labor of love. Town Attorney Lehnert clarified that the approval was conditional on the site plan of six units and one residential unit. She suggested adding a condition to limit the number of units on the site in accordance to the site plan. Ms. Plummer was not in favor of adding the condition to limit expansion. Ms. Will clarified that there were seven legal units on the property. She reviewed the platted overlay for existing units, which allowed ten units per acre. The current zoning would allow seven units and the applicant requested the SEZ for seven units.

Mr. Butcher questioned whether the Mango Inn offered weekly or nightly rentals. Ms. Will thought they had a three night minimal rental; however, they were zoned RM. Mr. Butcher questioned whether the applicants intended to stay there year round. Ms. Milligan responded that they would be onsite when they had guests and if they couldn't be there, someone else would.

Ms. Shamp remarked that the applicants made a stunning transformation of the property. She questioned whether they would increase the landscaping along the fence facing the school. Ms. Milligan replied that they were working on it and landscaping was being planted on the inside of the fence. Ms. Shamp questioned whether they would object to conditioning special events and COP. Ms. Milligan responded that they would prefer not to have those conditions and that they would comply with the existing conditions. Their vision for the property was to market for reunions and they would like to do weddings. Ms. Katt thanked the applicants for improving the property. Chair Zuba agreed that it looked attractive and was an upgrade to the neighborhood. He questioned whether the 90 day limit influenced the applicants. Ms. Milligan stated that it would be nice to have flexibility.

Mr. Durrett questioned whether there was a way to renew a 90 day lease. Ms. Will replied that Code limited stays to 90 days at a time, but they could check-out and check back in. Ms. Shamp questioned whether there was something in the Code that prevented guests from bringing their own alcohol. Ms. Will stated that Code was silent on the topic.

MOTION: Ms. Shamp moved to approve SEZ2015-0006 with the conditions as stated with regard to lighting, outdoor activity hours and the addition of a third condition that approval was conditioned to the presented site plan of the existing seven units, which are six rental units and one residential unit; second by Ms. Plummer.

VOTE: Motion approved; 7-0.

VI. LPA MEMBER ITEMS AND REPORTS

Mr. Steele questioned Town Attorney Lehnert regarding whether LPA members could attend meetings concerning the proposed downtown project. Town Attorney Lehnert replied in the affirmative and she recommended keeping track of any meetings he attended. She reviewed Sunshine Laws.

Mr. Butcher questioned whether he could offer his opinion to anyone. Town Attorney Lehnert responded yes, but he might want to keep track of who he spoke to.

VII. LPA ATTORNEY ITEMS - no items.

VIII. COMMUNITY DEVELOPMENT ITEMS - no items.

IX. ITEMS FOR NEXT MONTH'S AGENDA - no items.

X. PUBLIC COMMENT

Anita Cereceda, Mayor, appreciated the work Mr. Weinmann and Ms. Milligan did on the property. She indicated that she would attend more meetings to better understand different points of view. She thanked the LPA in advance for the hard work they would be doing in the coming year.

Dean Kirkesner, owner of Rebel Water Sports, thanked the LPA for grandfathering in his business. He stated that he sent Ms. Will an email that would help the Town get rid of the riffraff. He indicated that Ms. Will went to Town Council and stated that the LPA's intent was to grandfather in the PWVL addresses only. He thought the LPA grandfathered the businesses, not the PWVL addresses. He requested that LPA tell staff, the Town Attorney and Council what their intent was when they grandfathered in businesses. Town Attorney Lehnert responded that a question was raised as to what they intended to grandfather. Some locations did not have a permit that was issued by the Town to substantiate the grandfathering. Staff redrafted the grandfathering provision to allow those property owners to substantiate the existence of their business, which required a tax certificate, business tax receipts, paid taxes on the furniture vending business and permission from the property owner on which the business was located. All of those requirements must be dated back prior to January 1, 2015.

Ms. Shamp clarified that her intent in the motion was to grandfather the business where they were currently operating. Ms. Plummer discussed the 10% side setback in relation to jet ski operators.

XI. ADJOURNMENT

MOTION: Mr. Steele moved to adjourn the meeting; second by Ms. Shamp.

VOTE: Motion approved; 7-0.

Meeting adjourned at 10:06 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

- End of document

Handwritten signature and date "2-9-16".

RESOLUTION NUMBER 16-09

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
SEZ 2015-0006– Bed-and-Breakfast Inn
131-151 School Street**

WHEREAS, Myerside LLC, applicant and owner of the subject property, filed an application to obtain a special exception for a bed-and-breakfast inn in the Residential Conservation zoning district; and

WHEREAS, Applicant has indicated the STRAP number for the subject property is 29-46-24-W3-0020C.0290, and the subject property is legally described as indicated on attached Exhibit A; and

WHEREAS, the subject property is physically located at 131-151 School Street, Fort Myers Beach, Florida, and within the Boulevard future land use category; and

WHEREAS, a duly advertised public hearing was held before the Local Planning Agency (LPA) on January 12, 2016; and

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

WHEREAS, on March 7, 2016, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by LDC s. 34-88; and

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

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

1. Determination.

Based upon the recommendations, testimony, and evidence presented by Town staff, LPA, and interested parties, Special Exception SEZ2015-0006 for a bed-and-breakfast inn, as depicted on attached Exhibit A is APPROVED, subject to the conditions set forth in this Resolution.

2. Conditions.

- a. All outdoor lighting on the site will be "fully shielded" or "Full cutoff" fixtures to reduce glare and light trespass onto adjacent properties.
- b. Outdoor activities will be limited to between the hours of 7 AM and 10 PM, unless associated with a special event permit issued by the Town of Fort Myers Beach.
- c. Approval is for a total of 7 units (6 rental units and one owner residence) consistent with the sit plan attached as Exhibit A.

3. Findings and Conclusions of Law.

In accordance with LDC s. 34-88, the Town Council finds as follows:

- a. There are changed or changing conditions that make approval of the special exception request appropriate.
- b. The request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
- c. The request meets or exceeds all performance and locational standards set forth for the proposed use.
- d. The request will have no negative effects on environmentally critical areas and natural resources.
- e. The request will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.
- f. The requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code.

[Balance of page intentional left blank.]

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

Anita Cereceda, Mayor aye
Rexann Hosafros aye
Summer Stockton aye

Dan Andre, Vice Mayor aye
Alan Mandel aye

DULY PASSED AND ADOPTED this 7th day of March, 2016.

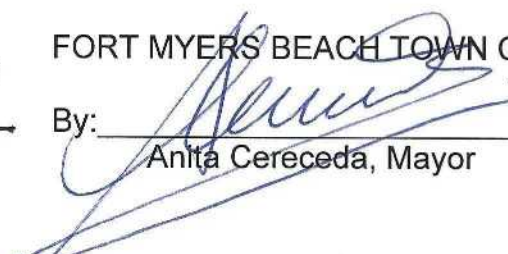
ATTEST:

By:

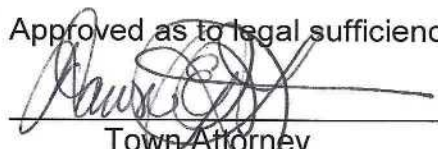

Michelle Mayher, Town Clerk

FORT MYERS BEACH TOWN COUNCIL

By:


Anita Cereceda, Mayor

Approved as to legal sufficiency


Town Attorney

Exhibits

A: Legal Description and Site Plan (Survey prepared by Mark Allen attached to staff report)

FIELDBOOK PAGE

FINAL SURVEY DATE

DWG. NO. 2014-3

1. **Requested Motion:**

Meeting Date: April 5, 2021

Appeal of Revocation of Street Performer Permit

Why the action is necessary:

Street Performer permit holders have the right to appeal the revocation of their permit per Ordinance 19-06.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Ordinance 19-06

4. **Submitter of Information:**

5. **Background:**

Mr. David Dekeyser was approved for a Street Performer permit in September 2020. On February 24, 2021 the Town Manager received a complaint about this performer through the Chamber of Commerce from a visitor. On March 2, 2021 we received another complaint from a merchant in Times Square. The Town Manager then directed staff to revoke this permit. Mr. Dekeyser requested an appeal dated 3/5/2021 and it was received by the Town on 3/8/2021.

Attachments:

1. STP 201221 App and Complaints
2. Appeal request with email chain
3. 19-06 ordinance amending Street Performers

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Patty Prevost, Building Services Administrative Assistant
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/8/2021
Approved - 3/11/2021
Approved - 3/26/2021
Final Approval - 3/29/2021



Town of Fort Myers Beach

2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0909

STREET PERFORMER APPLICATION

Official Use Only:

Permit # STP 201221

Town of Fort Myers Beach

Name: DAVID J. DEKEYSER SEP 11 2020
Email: DEKEYSER DAVID 2 @ GMAIL.COM Received by: _____
Address: 12142 SIESTA DR. FMB 33931
Phone: 239-839-7060 Cell Phone: 239-839-7060

Application Information

1. Are you over the age of 16? ☒ Yes ☐ No (If no, please complete the attached Parental Consent Form)

2. Describe, in detail, your performance including any costumes or materials used in your act. (Attach separate sheet if necessary) PLAY BONGO DRUM TO HIGH ENERGY DANCE MUSIC

Please select one: ☒ Individual Performer ☐ Performer within a group

Please select the type of performance:

☐ Dance ☐ Artist ☐ Mime/Statue
☐ Juggling (non-dangerous implements) ☒ Musician (specify instrument(s)) BONGO DRUM
☐ Other (Please specify the type of performance and supplies/equipment used. Attach separate sheet if necessary)

3. Have you previously held a Street Performer Permit with the Town of Fort Myers Beach? ☐ Yes ☒ No
If yes, please specify when: _____

Proof of Identity

You must provide proof of your identity and proof of identity of your parent/guardian if you are under the age of 18. Please check the item(s) below which you will provide as proof of identity.

	Performer	Guardian
Driver's License/State ID card	☒	☐
School ID card	☐	☐
Other, please list: <u>0226-170-59-177-0</u>	☐	☐

Driver's License Number (Performer)

0226 170 59 1770 State: FL

Driver's License Number (Parent/Guardian)

State: _____

HOME RUN INSURANCE POLICY EFFECTIVE 9/11/20

September 8, 2020



Town of Fort Myers Beach

2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0909

STREET PERFORMER APPLICATION

Official Use Only:

Permit #**STP**

You must submit the completed application at Town Hall including the background check form, parent/guardian consent form (if applicable) and Background check fee of \$75 and Permit fee of \$75. A Town employee will schedule an appointment time to discuss your application. A photo will be taken at the time you complete your interview. ****This photo does not guarantee that your permit application will be approved.**** If the background check is approved and the Street Performer requirements are met, a permit will be issued.

As a condition of issuance of the Street Performer Permit, the applicant agrees to indemnify, defend and hold harmless the Town of Fort Myers Beach and its officers, employees and agents from any suit, actions or claims arising out of, or in any way connected to, the activities permitted pursuant to this Article, except for any claims or liability arising solely from the negligence or misconduct of the Town, its officers, employees or agents.

I have read the attached rules and regulations for performers as outlined in the Town of Fort Myers Beach Ordinance 15-09 and agree to the terms and conditions set forth. Further, I authorize the Town of Fort Myers Beach to conduct a criminal background investigation.

Signature

Typed or printed name

DAVID J. DEKEYSER

Date

9-10-20

September 8, 2020

CERTIFICATE OF INSURANCE				ISSUE DATE		9/18/2020	
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUDER, AND THE CERTIFICATE HOLDER. IMPORTANT: IF THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED, THE POLICY(IES) MUST BE ENDORSED. IF SUBROGATION IS WAIVED, SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY, CERTAIN POLICIES MAY REQUIRE AN ENDORSEMENT. A STATEMENT ON THIS CERTIFICATE DOES NOT CONFER RIGHTS TO THE CERTIFICATE HOLDER IN LIEU OF SUCH ENDORSEMENT(S).							
PRODUCER Home Run Insurance 11800 Pinewood Lakes Dr Fort Myers, FL 33913				INSURER(S) AFFORDING COVERAGE			
				INSURER A: Scottsdale Insurance Company			
				INSURER B: N/A			
INSURED David Dekeyser dba Bongo Dave Entertainment 12142 Siesta Dr Fort Myers Beach, FL 33931				INSURER C: N/A			
				INSURER D: N/A			
				INSURER E: N/A			
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS		
A	General Liability	CPS3380091	9/11/2020	9/11/2021	General Aggregate	\$2,000,000	
					Products-Com/Op Agg.	\$1,000,000	
					Personal & Adv. Injury	Excluded	
					Each Occurrence	\$1,000,000	
					Damage Prem Rented To You	\$100,000	
					Med Expense (Any one person)	\$5,000	
B	Personal Liability				Combined Single Limit		
					Medical Payments To Others		
C	Excess Liability				Each Occurrence		
					Aggregate		
D							
E	Property				Building		
					Contents		
					Loss Of Use		
THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER. SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.							
Description of Operations / Specialty Items Entertainment Performed on Others' Premises							
Certificate Holder Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, FL 33931				Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Authorized Signature 			

Todd Sears

From: Roger Hernstadt
Sent: Thursday, February 25, 2021 9:10 AM
To: Doug Speirn-Smith; Todd Sears; Nello Cernoia; Daphnie Bercher
Cc: jacki@fmbchamber.com
Subject: FW: Feedback

fyi

From: Jacki Liszak <jacki@fmbchamber.com>
Sent: Thursday, February 25, 2021 8:52 AM
To: Roger Hernstadt <roger@fmbgov.com>
Subject: Fwd: Feedback

Good morning,
FYI below.
Have a great day
Jacki

Begin forwarded message:

From: william steffens <owner@notchchalet.com>
Date: February 24, 2021 at 7:41:57 PM EST
To: info@fmbchamber.com
Subject: Feedback

First I want to say we have enjoyed fort myers beach for a very long time with my first visit in 1989. The Chamber has done a great job with promoting the area and providing information, improvements and entertainment.

Feedback:

We were at the beach for my once a month Gyro and enjoyed the circus act, escape artist and of course the sunset.

The one thing that was a constant annoyance was the one man drummer. Not sure how you manage the entertainment, but I would suggest that his set be minimized to provide a break for those enjoying a meal. We sat eating for almost an hour to the same drum beat or very similar beat over and over and over and over and over (you get the point). He even was drumming during the other entertainer's set and seemed to increase the volume. We were not the only diners making comments wishing he would just stop for awhile.

Just some feedback from a visitor.

Keep up the good work.

Will Steffens

Todd Sears

From: ROGER HERNSTADT <fla_mariner@msn.com>
Sent: Tuesday, March 2, 2021 12:05 PM
To: Todd Sears
Subject: From Lallo

Hey Roger,

I just received this text last PM from Carlos, the owner of Bella Mozzarella corner of Estero and old san carlos. He also owns 2000 flavors ice cream and the property of Kilwins...

""Hi John, sorry to bother you. Do you know who gives permits to these "artist" performing at the plaza?? The really suck and really hurt us because they are annoying to the customers.... ""

I also agree with Carlos in his assessment of the absolute terrible obnoxious talent given to people in the square.

Is there a way that we as the times square merchant association help out in audition and the vetting process . It seems only fair being this is directly effecting the customers are our restaurants.

Thanks
John Lallo

 [Get Outlook for iOS](#)

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

TO: PATTY PREVOST
FROM: DAVID J. DEKEYSER
SUBJECT: FMB STREET PERFORMER APPEAL

3-5-21

DEAR PATTY,

PLEASE ACCEPT MY FORMAL APPEAL,
TO ALLOW ME TO CONTINUE PLAYING
A BONGO DRUM, IN TIME SQUARE. I
HAVE RECEIVED A POSITIVE RESPONSE
FROM VISITORS, LOCALS, & LOCAL MUSICIANS.
I CAN REDUCE NOISE LEVEL BY
PLAYING TO A WIRELESS HEADSET & NO
CYMBAL.

I REALLY ENJOY PLAYING ON FMB, &
HOPE TO BE ALLOWED TO CONTINUE.

SINCERELY,

DAVID J. DEKEYSER

Town of Fort Myers Beach

MAR 8 2021

Received by: _____

Patty Prevost

From: David DeKeyser <dekeyserdavid2@gmail.com>
Sent: Thursday, March 04, 2021 10:23 AM
To: Patty Prevost
Subject: Re: Revocation process

Thank you for the information.

On Thu, Mar 4, 2021, 10:20 AM Patty Prevost <Patty@fmbgov.com> wrote:

Hello David,

Per Article VII Sec. 10-196 , you have 5 days to file for an appeal, requested in writing to be heard by the Town Council at the next available Council meeting.

I have attached this for your convenience.

Patty Prevost

Community Development Assistant

Town of Fort Myers Beach

2525 Estero Blvd

Fort Myers Beach, FL 33931

Phone # 239 765-0202 ex 1303

Patty@fmbgov.com

From: David DeKeyser <dekeyserdavid2@gmail.com>
Sent: Thursday, March 04, 2021 9:36 AM
To: Patty Prevost <Patty@fmbgov.com>
Subject: Re: Permits are ready for pick up

Hello Patty,

I was informed by code enforcement that my permit was being pulled. I am very surprised and not sure why. I really enjoy playing in time square, and am willing to make any changes to my routine.

Sincerely,

David J. DeKeyser

On Wed, Sep 30, 2020, 9:51 AM David DeKeyser <dekeyserdavid2@gmail.com> wrote:

Great, thank you so much!

On Wed, Sep 30, 2020, 9:29 AM Patty Prevost <Patty@fmbgov.com> wrote:

Hello,

The Street Performer permits are ready for pick up.

Just a reminder – **there is to be no selling of products – you are allowed to accept donations only.**

When you come to Town Hall please call the receptionist and let her know that you are here to pick up your permit.

Thank you,

Patty Prevost

Town of Fort Myers Beach

2525 Estero Blvd

Fort Myers Beach, FL 33931

Phone # 239 765-0202

Patty@fmbgov.com

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ORDINANCE NO. 19-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE VII OF CHAPTER 10 BUSINESSES, OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA "STREET PERFORMERS", PROVIDING FOR REVISIONS TO THE APPLICATION REQUIREMENTS, PERMIT CONDITIONS, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS, CONFLICTS, AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council finds that the existence in the Town of street performers provides a public amenity that enhances the character of the Town; and

WHEREAS, the Town seeks to encourage such performances to the extent that they do not interfere with the reasonable expectation of residents and businesses to the enjoyment of peace and quiet in their homes or to the ability of businesses to operate; and

WHEREAS, the Town Council recognizes that street performers seek to and do draw crowds to their performances which may create serious safety problems by impacting the ability of pedestrians to move safely on sidewalks or may impede the response time of safety personnel; and

WHEREAS, the Town is cognizant that street performers may be engaged in activities protected by the First Amendment, and, as such, the Town is limited to imposing reasonable time, place, and manner restrictions on street performers to the extent necessary to ensure the safety of performers, their audience, and the general public; and

WHEREAS, the Town, in permitting street performances, seeks to balance the interests of the performers, the residents and businesses in the Town; and

WHEREAS, the Town had previously adopted Ordinance 12-09 regulating street performers (as amended by Ordinance 15-09), and now seeks to further amend its regulations to provide for additional detail and clarity to those regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:¹

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

Section 2. Chapter 10, Article VII, Street Performers, of the Code of Ordinances of Fort Myers Beach, Florida, is hereby amended as follows:

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

ARTICLE VII – STREET PERFORMERS

Sec. 10-190. Definitions. The following words, when used in this Article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Perform means ~~and includes, but is not limited to, the following activities; acting, singing, playing musical instruments, pantomime, juggling, magic, dancing, reading, puppetry, comedy, acrobatics, character impressions, creating visual art, and other similar types of public performance done for the purpose of public entertainment or amusement~~ acting, art, dancing, juggling or magic. Any other activity must be specifically stated on the permit application and approved by the Town.

Performer means an individual who performs in a public area, for the purpose of providing public entertainment, and to whom a permit has been issued for that purpose by the Town.

Public area means and includes any public sidewalk, alley, street, public park, public right of way or easement located in the Town.

Performance site area means that performers are only allowed within designated sites on a first come, first served basis.

Sec. 10-191. Prohibition.

No person may perform in any public area in the Town without a permit issued pursuant to Section 10-192 of this Article.

Sec. 10-192. Performer's Permit Application; Permit Conditions.

- (a) The Town ~~may will~~ issue ~~a limited number of up to (12) annual~~ annually eight (8) street performer permits for the town owned Times Square area on a first come, first serve basis to persons who make proper application, meet the requirements of this Article, and pay the permit fee established under the Town Fee Schedule. ~~The number of permits will be determined during the annual budget process and may be adjusted as deemed necessary.~~ Those applicants not receiving a permit due to the limit being reached will be placed on a waiting list.
- (b) Performers may submit an application to Town Council for a use permit for other public areas.
- (c) The information required on a permit application include the performer's contact information and a description of the type of performance activities the performer intends to conduct. All performances are subject to performance review and Town approval. Each applicant will also be subject to a countrywide criminal records check.

- (d) The Town reserves the right to deny a permit for any reason, including, but not limited to if the applicant has been convicted of any act that would represent a threat to public safety or security for the viewing audience. An automatic denial shall be issued in the event of open or unpaid code enforcement cases, Town parking permit violations, or other outstanding unresolved permit issues. Permit denials may be appealed to the Town Council. An application will be automatically denied if a criminal records check produces any one or more of the following offenses.
- (1) Felony convictions
 - (2) Conviction of a sexual related offense
 - (3) Alcohol or drug convictions in the past 5 years
 - (4) More than 5 misdemeanors in the past 5 years
- (e) All street performers permits will be issued based on the Town's fiscal year and will expire at midnight on September 30 of each year. Permit applications will be accepted September 1. Permit applications received after September 30th shall be charged two times the rate in the Town Fee Schedule.
- (f) Permits may be issued, upon Town manager approval, to any minor under the age of sixteen (16), provided the application for the permit is accompanied by a written consent signed by the parent, legal guardian, or custodian of any minor. Minors will not be permitted to perform during the hours school is in session. The parent or legal guardian of a minor must also complete and pay for a criminal records check. If more than one parent or guardian will accompany the minor, each must complete a criminal records check. Criminal records checks after the first will be charged at the actual cost of the criminal records check.
- (g) Street Performer permits are non-transferable.
- (h) ~~Groups will perform under one permit, however all members must complete an application and criminal records check. Criminal records checks after the first will be charged at the actual cost of the criminal records check~~ Each member of a group will require one permit.
- (i) As a condition to issuance of the street performer permit, the applicant must agree to indemnify, defend, and hold harmless the Town and its officers, employees and agents from any suit, actions or claims arising out of or in any way connected to the activities permitted pursuant to this Article, except for any claims or liability arising solely from the negligence or misconduct of the Town, its officers, employees or agents.

- (i) Performers must obtain insurance. Certificates of insurance shall list the Town as the certificate holder and as an additional insured. Insurance shall be maintained during the entire term of the contract/permit, shall be of the following for and limits:
 - (1) Workers Compensation Coverage for all employees to performers that comply with Statutory Limits in compliance with the applicable statutory limits of State Florida and Federal laws;
 - (2) Commercial General Liability Insurance with minimum limits of \$1,000,000 each per occurrence combined property and bodily injury single limit or \$1,000,000 each occurrence/\$2,000,000 general aggregate; (3) and Crime Coverage with a minimum limits of \$200,000.
 - (3) The establishment of minimum limits of insurance by Town does not reduce or limit the liability or responsibilities of Performer Service Provider.

Sec. 10-193. Display of Permit.

Permits must be ~~displayed and must visibly display their permit~~ visibly displayed at all times while performing on Town property. Permits will contain the name, photograph and permit number of the applicant and the year for which the permit is valid.

Sec. 10-194. Permitted Performances; Restrictions.

- (a) Street performances are limited to ~~these~~ performance site areas as depicted on the Street Performer Performance Map, hereafter known as Exhibit A. Performances will only be allowed on a daily, first come, first served basis. No permit holder will make efforts to reserve a location, and each permit holder will abandon a location at the end of his or her working day, including the removal of all personal property. There will be no permanent physical alteration of the public space.
- (b) Two or more street performers may combine their performances into one integrated performance. A map of the allowable performance areas will be provided upon issuance of a permit.
- (c) Street performers will abide by all requirements of the Town's noise ordinance
- (d) Street performers will not create any undue interference with the passage of the public through a public area. If a performer attracts a crowd sufficient to obstruct the public way, a Lee County Sheriff's Deputy or a Town employee may disperse the crowd that is creating the obstruction. The Deputy or Town employee may also ask the performer to temporarily suspend a performance or to move his or her location when such action is

necessary to protect the public safety, or public order, or restore unobstructed passage of the public through a public area.

- (e) Performances including a fire must be ~~reviewed~~ authorized by the Fort Myers Beach Fire Department prior to permit issuance.
- (f) ~~Performers will not engage in the~~ The application of permanent, semi-permanent (henna) tattoos or body piercing is prohibited not a performance that is allowed.
- (g) Animals may not be registered as performers and may not be part of any performance.
- (h) Performances involving dangerous weapons are not permitted.
- (i) Performances will not include any obscene material.
- (j) Performers will not harass or coerce any member of the public.
- (k) Performers will not block access to the entrance of any building, bicycle rack, or trash receptacle.
- (l) Performers will not connect to any electrical outlets or power sources owned by the Town or any private business, or utilize any electric extension cords.
- (m) Performers will not perform in a ~~street unless such street has been closed to vehicular traffic~~ public area or undesignated area not shown as a performance site on the map attached to their permit.
- (n) Permitted Special Events, including the Sunset Celebration, take precedence over street performances. Street Performers will not perform within fifty feet (50') of any area that has been permitted for a Special Event pursuant to Chapter 22, Town of Fort Myers Beach Code of Ordinances; unless such street performance will not interfere with the permitted special event. No performances are authorized on July 4th or December 31st after 7 pm.
- (o) Performances, including preparation, may take place in any designated performance site area, as depicted in Exhibit A, but only between the hours of 10:00 A.M. ~~and 9:00 p.m. on Sundays through Thursdays, and between the hours of 10:00 a.m. and 11:00 P.M. on Fridays and Saturdays.~~
- (p) No street performer ~~may~~ shall sell goods or services.

- (q) Performers who are minors must have a parent or legal guardian with them at all times while performing any street performance permitted under this Article.

Sec. 10-195. Acceptance of Contributions.

- (a) A performer may accept voluntary contributions of money or property at a performance.
- (b) Contributions may be received in any receptacle of reasonable size. The use of such open receptacle evidencing intent to receive money is prohibited unless a street performance is in preparation, underway, or the performance has recently concluded.
- (c) The receptacle may have a sign which invites contributions, provided such sign is no larger than 12 inches by 18 inches and does not suggest a contribution amount.

Sec. 10-196. Permit Suspension and Revocation; Appeal.

- (a) The Town Manager may suspend or revoke a permit for one or both of the following reasons:
 - (1) A performer who is found to have obtained a permit through fraud or through material misrepresentation on the permit application.
 - (2) A performer who violates any of the provisions of this Article.
- (b) Any revocation of a permit under this section will be for the duration of the current permitting period and for the next subsequent permitting period.
- (c) The decision of the Town Manager to suspend or revoke a permit may be appealed to the Town Council. The appeal must be filed within five (5) business days of permit revocation. Such appeal must be requested in writing and will be heard by the Town Council at the next available Town Council meeting. The performer may not perform during the appeal process.
- (d) Revocation or suspension of a permit will result in the performer's permit becoming available to the Street Performer's permit waiting list, following the expiration of the appeal request time period or the denial of the appeal.

Sec. 10-197. Violation—Penalty.

Engaging in a street performance without a permit will result in the violator being subject to such penalties and remedies as provided by Code, including but not limited to, being issued a Trespass Warrant from Town property.

Section 3. The Town Council intends that this Ordinance be made part of the Code of Ordinances, Town of Fort Myers Beach, Florida; and that sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the Town Manager without the need for a public hearing.

Section 4. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

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

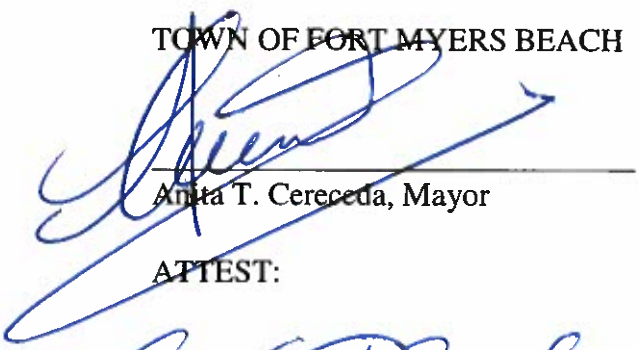
Section 7. This ordinance will take effect immediately upon adoption by the Town Council.

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

Anita Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

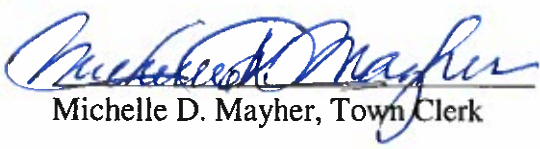
ADOPTED this 19th day of August, 2019 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



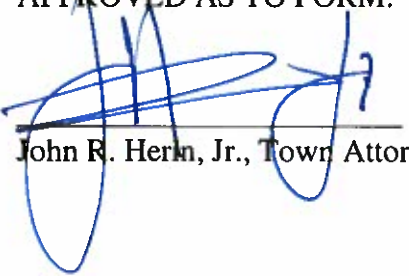
Anita T. Cereceda, Mayor

ATTEST:



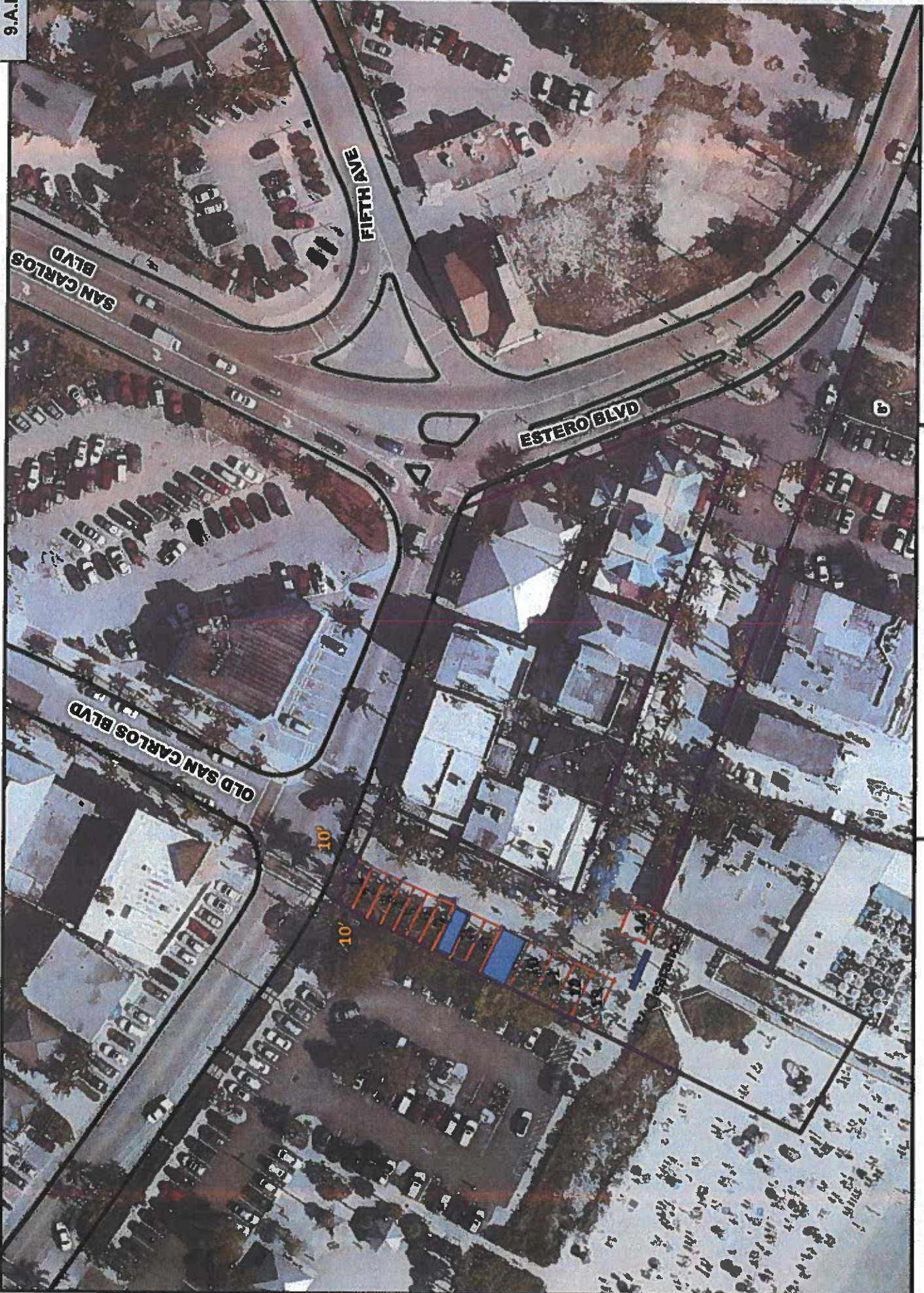
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:



John R. Herin, Jr., Town Attorney

9.A.b



N

Roads



Time Square Right-of-Way



Packet Pg. 28

USGS NAD83, Downloaded Map Data and Imagery Public Domain

Time Square Road Map

Date	8/11/2015	Drawn By	PW GIS	Sheet	1	Scale	1" = 75'
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Town of Fort Myers Beach, Florida

DEPARTMENT OF PUBLIC WORKS
2623 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
(239) 785-0202



ESTERO BLVD

Area 1
1121
sq ft

Area 2
594 sq ft

Area 3
2800 sq ft

Area 4
763 sq ft

Area 5
918 sq ft

Area 6
566 sq ft

Area 7
784 sq ft

Area 8
586 sq ft

Area 9
374 sq ft

Area 10
1187
sq ft

5' walkways

20' Fire Lane Path

22'

8'

5' walkways

1. Requested Motion:

Meeting Date: April 5, 2021

Approve Resolution 21-17, which sets forth the Town Council's opposition to Florida Senate Bill 522 and House Bill 219, further preempting the regulation of short-term rentals to the State and further eroding municipal home rule powers.

Why the action is necessary:

The proposed Resolution implements the Council's directive to Town staff to convey to the Florida Legislature the Council's objection to Senate Bill 522 and House Bill 219.

What the action accomplishes:

Forwarding a copy of this Resolution to the Lee County Legislative Delegation represents the Town Council's objection to State pre-emption of the regulation of short-term rentals and the erosion of home rule powers.

2. Agenda:

TOWN ATTORNEY'S ITEMS

3. Requirement/Purpose:

Resolution

4. Submitter of Information:

5. Background:

Attachments:

1. 20-17, 120829363_1_Resolution Objecting to STR Pre-emption-C1

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/22/2021
Approved - 3/23/2021
Approved - 3/25/2021
Final Approval - 3/29/2021

RESOLUTION NO. 21-17

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, OPPOSING FLORIDA SENATE BILL 522 AND HOUSE BILL 219, WHICH WOULD PREEMPT REGULATION OF SHORT-TERM RENTALS TO THE STATE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Senator Manny Diaz, Jr., and Representatives Jason Fischer and Anthony Sabatini are leading the effort to preempt regulation of short-term rentals to the state; and

WHEREAS, Senator Diaz's Senate Bill 522 and Representatives Fischer and Sabatini's House Bill 219 would, except for ordinances adopted prior to June 1, 2011, preempt all local government regulation of short-term rentals to the State of Florida; and

WHEREAS, a “one size fits all” approach by state regulation of short-term rentals in Florida ignores the fact that communities throughout our state are unique and have different needs with regard to this issue; and

WHEREAS, the Town of Fort Myers Beach (“Town”) is composed of year-round residents and seasonal visitors who live, work, raise families, patronize local businesses, and engage in recreation in our Town; and

WHEREAS, laws preempting the City’s control over preserving the quality of life for those residents by regulating short-term rentals would dramatically impair many of the characteristics that make the Town a great place to live, visit, work, raise families, do business, and engage in recreation; and

WHEREAS, decisions regarding matters directly impacting the quality of life of Florida’s localities should be left to Florida’s local governments; and

WHEREAS, the Town seeks to preserve and protect home rule authority for Fort Myers Beach and local governments; and

WHEREAS, the Town joins many local governments across the State in this effort.

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

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

Section 2. Florida cities value the property rights of all citizens, but Senate Bill 522 and House Bill 219 would prevent cities from balancing the property rights of all. Therefore, the

Town Council of the town of Fort Myers Beach opposes Senate Bill 522 and House Bill 219, preempting local regulation of short-term rentals.

Section 3. The Town Council directs the Town Clerk to transmit a copy of this Resolution to the Florida Governor, the Lee County Florida Legislative delegation, and the Florida League of Cities for distribution.

Section 4. This Resolution shall become effective immediately upon adoption.

The forgoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a vote, the results was as follows:

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this 5th day of April, 2021 by the Town Council of the Town of Fort Myers Beach, Florida

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April, 2021