

1. Requested Motion:

Meeting Date: June 6, 2011

A rezoning of 324 Estero Boulevard from Residential Multifamily (RM) to Residential Planned Development (RPD) utilizing the pre-disaster buildback provision found in Section 34-3237 of the Fort Myers Beach Land Development Code.

Why the action is necessary:

This action will allow the applicant to rebuild their existing structure and become compliant with the current Federal Emergency Management Agency's (FEMA) flood elevation requirements in accordance with Policy 4-E-1 of the Comprehensive Plan.

What the action accomplishes:

2. Agenda:

- Consent
- Administrative
- Public Hearing

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other

4. Submitter of Information:

- Council
- Town Staff – Comm. Dev.
- Town Attorney

5. Background:

The subject property is located at 324 Estero Boulevard on the north end of Estero Island. The existing structure was constructed in 1963 per the Lee County Property Appraiser and, while it is a raised structure, with the recent change in flood regulations it is no longer in compliance with the current FEMA standards for that location on the island. The subject property is located in a VE (velocity) flood zone and will be required to elevate to a base flood elevation of 17 feet. Currently, the subject property is elevated to a finished floor elevation of 11.3 feet

The applicant proposes the redevelopment of the subject property by utilizing the Residential Planned Development requirement of the pre-disaster buildback policy mentioned in Policy 4-E-1 in the Comprehensive Plan and in Section 34-3237 of the LDC.

A new three story, three unit residential structure, over parking will replace the existing stilt frame building. The redevelopment proposal meets the required setbacks, and does not develop any permanent structures seaward of the 1978 coastal construction line. The applicant is requesting a deviation for (1) an additional 5 feet in height and story and (2) for additional square footage above the existing amount.

The LPA held a public hearing for the request at their May 10, 2011 meeting. The applicant presented their case then Staff presented its case along with a recommendation for approval. LPA had a lengthy question and answer period and discussion before voting 6-1 to deny the request. LPA member Kakatsch was the lone dissenting vote.

Please note that the meeting minutes from the May 10, 2011 LPA meeting are still in draft form and have not been officially approved by the LPA. Since Council is recessing in July and the June 20th agenda is substantial, Staff has scheduled this hearing so the applicant's case may be considered before August.

Attachments:

- Draft Town Council resolution
- LPA resolution 2011-005

- Draft LPA minutes from the May 10, 2011 meeting
- LPA packet including staff report from the May 10, 2011 meeting

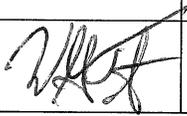
6. Alternative Action:

1. Deny the requested rezoning
2. Approved the requested rezoning subject to alternative conditions

7. Management Recommendations:

Approve the requested Residential Planned Development rezoning and deviations subject to the conditions recommended in the Staff report.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 11-07

ROWE RPD

WHEREAS, Henrietta and Christopher Rowe, the owners of property located at 324 Estero Boulevard Fort Myers Beach, Florida have requested to rezone .43 acres from Residential Multifamily (RM) to Residential Planned Development (RPD) to approve a schedule of uses, and approve certain deviations from the requirements of the Land Development Code, all as indicated on the Master Concept Plan; and

WHEREAS, the subject property is located in the both the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP for the property is 24-46-23-W1-00900.0010 and the legal description for the property is Lot 1, Gulf Shores subdivision, according to the plat thereof recorded in Plat Book 9 Page 88, of the Public Records of Lee County, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on May 10, 2011; at which time the LPA gave full and complete consideration to the request of the Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85, and recommended denial of applicant's request as set forth in LPA Resolution No. 2011-05; and

WHEREAS, at its meeting of May 10, 2011, the LPA instructed Town staff to bring this application forward to Town Council without the necessity of having approved LPA minutes; and

WHEREAS, a public hearing on this matter was legally advertised and held before the town Council on June 6, 2011, at which time the Town Council gave full and complete consideration to th request of the Applicant, LPA resolution 2011-005, the recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The Town Council hereby APPROVES/DENIES the request to rezone the subject property to a RPD zoning district [subject to the conditions and deviations set forth with specificity below].

CONDITIONS OF APPROVAL

1. The proposed building and all proposed amenities must comply with all FEMA regulations in effect at the time of Development Order and all provisions found in LDC Chapter 34-3237, excluding the requested and approved deviations.
2. The mechanical cupola illustrated on applicant's Exhibit D-2-2 must remain non-habitable space.

3. A commercial grade sprinkler and alarm system(s) that meet all Florida fire codes must be included in Development Order plans and installed at the time of construction.
4. Applicant must meet all applicable environmental requirements of the LDC, including but not limited to protection of dune vegetation and appropriate sea turtle lighting.
5. At the time of Development Order, applicant must adhere to best stormwater management practices and all applicable LDC sections pertaining to stormwater and drainage when addressing the on-site stormwater conditions.
6. Applicant must provide any and all required Florida Department of Environmental Protection approvals and permits at the time of Development Order.

APPROVED DEVIATIONS

Deviation #1

Deviation from Table 34-3 of the LDC, which allows for a maximum height of 30 feet/3 stories, to allow for a maximum height of 35 feet/4 stories.

Deviation #2

Deviation from Section 34-3237(4) which requires total interior square footage of a rebuilt dwelling not to exceed the interior square footage of the original dwelling unit, to allow for an increase of interior square footage to permit the proposed 13,650 square foot condominium.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, and a review of the application and standards for the planned development zoning approval, the Town Council makes the following findings and reaches the following conclusions:

1. *Whether there exists changed or changing conditions which make the approval of the request appropriate.*

The area surrounding the subject property has changed over the past years, with the development of mid-rise and high-rise resort condominiums to the east and west. With resort units and condominiums on both sides of the subject property that range in height from 6 to 8 stories, the proposed 35' building is more compatible in terms of height than the existing single story stilt frame structure. Additionally, the proposed density of three units is the historically documented number of units shown on the Lee County Property Appraiser's field cards (see the applicant Exhibit D-2-4).

2. *The impact of a proposed change on the intent of Chapter 34.*

The proposed rezoning will implement the Town's pre-disaster buildback policy and allow for the appropriate infill redevelopment of the subject property. The provisions to accomplish the applicant's request can be found in Section 34-3237 of the LDC and Policy 4-E-1 as discussed in the analysis section of the Staff report. This is a request contemplated and even encouraged by the Comprehensive Plan and Land Development Code. The proposed redevelopment will result in the improved health, safety and welfare of the surrounding properties, as well as the subject property, by bringing the building into compliance with current FEMA flood elevation requirements. The proposed change is consistent with the intent of Chapter 34 of the LDC.

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

As discussed in the Staff analysis and in applicant's Exhibit D-1-C, which is attached hereto and incorporated herein by reference, the proposed RPD is consistent with the Comprehensive Plan, specifically the policies pertaining to the Mixed Residential future land use category and the pre-disaster buildback provisions. The residential uses and the historically documented three units do not exceed the general densities and intensities set for the in both the Comprehensive Plan and the LDC. Additionally, this request will further the Town's goal of reducing flood insurance rates for residents by bringing another non-conforming unit into compliance with current FEMA standards.

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

The proposed use is residential in nature and therefore is not required to comply with any performance or locational standards.

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

The proposed redevelopment at the subject property is infill in nature and as such, the current urban services available at the site will also be available when the project is complete.

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

In accordance with current Land Development Code regulations, no portion of the subject property that falls within the Environmentally Critical (EC zoning district has been included in the RPD request thereby protecting, conserving and preserving these sensitive environmental lands. In addition, the applicant has entered into an agreement with the County to allow for beach renourishment on the property.

7. *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 requested RPD is compatible with the surrounding properties. As an infill project, the subject property has the benefit of being designed to fit within its neighborhood context while still coming into compliance with the current FEMA regulations and improving the overall aesthetics of the area. The request, as proposed will not create any damage, hazard, nuisance or other detriments of persons or property.

8. *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.*

The Traffic Impact Statement requirement was waived by the Community Development Director in a memo dated April 13, 2011, which is included in Exhibit A. The effect of that waiver is a determination that the proposed development will have no net impact or burden on the transportation services of the Town.

Upon a motion made by _____ and seconded by _____, this Resolution was

DULY PASSED AND ADOPTED ON THIS 6TH DAY OF June, 2011.

Larry Kiker, Mayor
Alan Mandel
Joe Kosinski

Bob Raymond, Vice mayor
Jo List

ATTEST:

By: _____
Larry Kiker
Mayor

By: _____
Michelle D. Mayher
Town Clerk

Approved as to form and legal sufficiency:

By: _____
FOWLER WHITE BOGGS
Town Attorney

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2011-005
FMBDCI2011-0002
ROWE RPD

WHEREAS, Henrietta and Christopher Rowe, the owners of property located at 324 Estero Boulevard Fort Myers Beach, Florida have requested to rezone .43 acres from Residential Multifamily (RM) to Residential Planned Development (RPD) to approve a schedule of uses, and approve certain deviations from the requirements of the Land Development Code, all as indicated on the Master Concept Plan; and

WHEREAS, the subject property is located in the both the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP for the property is 24-46-23-W1-00900.0010 and the legal description for the property is Lot 1, Gulf Shores subdivision, according to the plat thereof recorded in Plat Book 9 Page 88, of the Public Records of Lee County, Florida; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 10, 2011; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-85

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The LPA recommends the Town Council **DENY** the request to rezone the subject property to a RPD zoning district.

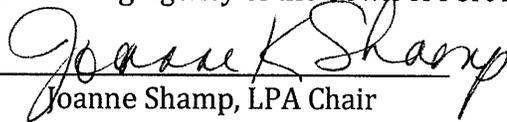
*The remaining portion of the page left blank intentionally.
Motion, vote and signatures are on the following page.*

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Van Duzer** and seconded by LPA Member **Ryffel**, and upon being put to a vote, the result was as follows:

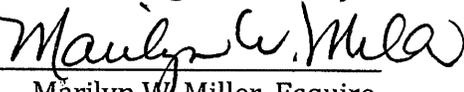
Joanne Shamp, Chair	AYE	Bill Van Duzer, Member	AYE
Carleton Ryffel, Vice Chair	AYE	Rochelle Kay, Member	AYE
John Kakatsch, Member	NAY	Hank Zuba, Member	AYE
Tom Cameron, Member	AYE		

DULY PASSED AND ADOPTED THIS 10th day of MAY, 2011.

Local Planning Agency of the Town of Fort Myers Beach

By: 
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: 
Marilyn W. Miller, Esquire
LPA Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, May 10, 2011

I. CALL TO ORDER

Meeting was called to order at 9:02 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer
John Kakatsch
Hank Zuba
Rochelle Kay
Carleton Ryffel
Tom Cameron

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad, Planning Coordinator; Keith Laakkonen, Environmental Services Coordinator; and Town Manager Terry Stewart.

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. SPECIAL COMMENT-TOWN MANAGER TERRY STEWART

The board and Mr. Stewart welcomed new member, Tom Cameron. Mr. Stewart explained that his presence at this meeting is basically to help clarify positions regarding the COP issue on the beach, since this topic has generated discussions and confusion at other levels. He said that the LPA worked hard on a resolution back in 2009 but for some reason it had never been brought forward for the Council's review at that time. Since then, he discovered it and sent it forward but the Council "rejected the premise that was within the resolution," in that that resolution dealt with the Comp Plan "and the Comp Plan essentially did not provide for it, therefore it was barred." The Council's policy decision, he said, was that it should be dealt with within the LDC. He explained that there is a "unique situation" on the island in that there are some locations where there is service of alcohol "within the confines of the property owner's property that happens to go out onto the sand where they can serve alcohol and alcohol can be consumed at those locations." He continued that there are no rules or regulations in place at this time to control how this is done by those locations or any other locations that might be in this position in the future. Now there is service of alcohol on the beach in places with the Town having no regulation over this so the "Council's vision was from a policy matter,

that this board should undertake an opportunity to provide a recommendation of frameworks” to bring to Council about how to regulate and manage the service of alcohol on the beach in an equitable fashion. Mr. Stewart continued to explain the Council’s position regarding sending this topic and said that the new Community Development, Mr. Fluegel, has been directed by Council to provide a new framework for a different course of action to revise this item.

Ms. Shamp thanked him for addressing the LPA directly about this and asked if there were any questions or comments at this time but asked that public comment be held until later in the meeting.

IV. MINUTES

A. Minutes of April 12, 2011

Motion: Ms. Kay moved to accept the minutes, as corrected with minor edits.

Seconded by Mr. Kakatsch;

Mr. Ryffel asked that his recorded comments be changed for clarity.

Vote: Motion passed 7-0.

V. PUBLIC HEARINGS

A. DCI 2011-002 ROWE RPD

LPA swore the witnesses, as well as all those present who will make public comments. Staff testified that there was public notification in local newspapers as Ms. Shamp asked members for any ex-parte communications. Mr. Van Duzer made a site visit, as did Ms. Shamp who also received an email but didn’t respond; Mr. Ryffel made a site visit and received 2 calls from citizens who wondered what this involved and he did some “historical research” talking to other property owners.

Ms. Shamp called for the applicant to present its case. Mr. Hartzall of Pavese Law Firm, spoke for the applicant, Mr. and Mrs. Chris Rowe of 324 Estero Blvd., property owners. He gave a brief background of the case and the reasons why they are requesting a rezoning of the property from Residential Multi-family to Residential Planned Development. He stated that they were told by their realtor at the time they purchased the property that they could legally have up to 4 units there and, based on their needs at the time, that was reasonable. They have a disabled son who in their care and they wanted to build him a separate quarters close to family, even though he is fairly well functioning, to give him some independence. They met with Dr. Shockey who advised them they could not use the property as a 4 unit, but he researched and learned that the property had been used as a triplex in the past and could be eligible for 3 units under the Pre-disaster Build-back regulations if the applicant would apply for this planned development process. He stated that the applicant is aware that this is a cumbersome process but it allows for flexibility by the Town in placing certain restrictions and regulations on any approvals.

The applicant testified that the existing building is a 2 story, stilt building built in 1963 with additions from 1970, and not structurally stable. The Pre-disaster Build-

back regulations allow for structures like this to be essentially rebuilt before a disaster can cause it to be totally demolished. Mr. Hartzall asked that Alexis Crespo, Planner, Bill Glass, Architect and Strictland Smith, Engineer, be recognized in the record as experts in their fields but Ms. Miller opined that this is not required in this quasi-judicial hearing. Ms. Shamp appreciated the statement of their credentials for the record:

Alexis Crespo, certified Planner, with a Bachelor's degree in Urban and Regional Planning, is a lead AP (Accredited Professional) and is President of the local chapter of the Caloosa Planning and Zoning Assoc. and has been recognized as an expert in planning and zoning in local counties.

Mr. Smith is a registered professional engineer in the state in matters of civil engineering and drainage matters. Mr. Glass is an architect G2 Architecture, an AIA, and an expert in architecture.

Ms. Crespo testified with a Power Point presentation. She gave an overview of the topics she would discuss as they related to the codes, Comp Plan, LDC, etc. The request is to rezone the 6500 sf property to allow for a residential planned development to provide for a 3 unit parcel. She said that the property is actually 19,000 sf with about 12,300 of it seaward of the coastal control line and the remaining area is the 6500. The existing structure is built to 11.3' which is "way below" the current FEMA standards, and this structure has been approved as a triplex use. To the north are single housing units of Pink Shell, commercial planned development; to the south is zoned as beach, environmentally critical; the east has mixed residential use, with a condominium resort; west is CPD zoning with mixed residential future land use and currently has an 8 story complex. Additional photos showed surrounding properties further out in that area and Ms. Crespo gave details about these, commenting that the subject property is the only one still standing that is outdated and single story. She also showed all of the different zoning districts in this area. Ms. Crespo continued that approval of this application would allow for the new construction to be up to current FEMA standards, address general safety issues and improve aesthetics overall. The applicant is requesting the use as a triplex with standard accessories, such as pool and fencing, and parking will be under the building with a maximum number of spaces in accordance with the LDC.

Ms. Crespo stated that the Master Concept Plan (in packets) is proposed with 2 deviations: the first from table 34-3 of the LDC and applies to maximum heights in the zoning district, 30 ft. and 3 stories but the applicant is requesting 35 ft and 4 stories, due to current compliance requirements and compatibility in the neighborhood. She said that staff has agreed with this deviation; the second is from 34-3237 of the Pre-disaster Build-back provisions involving square footage (she passed out a floor plan). The plans provide for 3000 sf per unit and show an increase of the pre-existing structure. She stated that staff has found that this will not negatively impact surrounding area or the health, safety or welfare of the Town.

The presentation continued to show more views of the property and the proposed changes as they impact the neighborhood. Staff has included a waiver from TIS because there is such minimal impact from this request. Ms. Crespo discussed the impact of the proposed change on Chapter 34 and said that this application meets all of the setback requirements, special requirements of the zone and is consistent with Ch 34. There will be no impact to the natural resources on the beach and the environmentally critical area will remain the same. Ms. Crespo referred to Comp Plan compliance 4B2 and said that the application is consistent with those provisions as well as 4B8 (Recreation Land Use). Policy 4B1, Pre-disaster Build-back, looks at density of the property, allowing the property to be restored back to that density, and RPD zoning; this application is in compliance with this policy. Policy 4E2, coastal setbacks, does not apply since there is no construction proposed to impact this area. Ms. Crespo ended by opining that the proposal and application are in compliance with the Town of FMB Comp Plan and said that the staff report supports approval of the application, with 6 conditions, and the applicant is in agreement with those conditions.

Ms. Shamp opened the floor for LPA questions. Ms. Kay asked about the height of the building and the fact that applicant is stating that there is no impact on the neighborhood when she said there has been concern by neighbors. Mr. Hartzall said that this is because some of the neighbors would like to see a short structure remain there but what is being proposed is within their rights as to what is allowed.

Mr. Kakatsch asked if the building will actually be 52 ft. high and the applicant agreed, adding that FMB measures from the base flood line (Ms. Shamp verified this in the code).

Ms. Shamp asked if the 35 ft. includes the cupola. They were not readily able to give the additional square footage of this. She also asked if there was a possibility to move the structure landward to prevent changing the view; this is not possible without encroachment.

Mr. Zuba asked about the total sf of the previous triplex that was on the site and he was not pleased with receiving a new floor plan at this late time. He said this is a substantial increase in the sf and the applicant agreed that it must be due to the FEMA standards, etc. Mr. Zuba asked about the designation of 3 of the "multi-family units" to be used as short-term rentals. The applicant would like to reserve that option but Mr. Zuba said this would make it a commercial use. He also requests that staff give a report on the current condition of the building and how it is considered unsafe. The applicant clarified this by saying that they are not suggesting that the building is unsafe in that it should be condemned but rather that it does not meet current codes for structures in the flood zones. Ms. Crespo interjected that, if the LPA objected, the applicant would consider removing their rental request from the application.

Ms. Shamp asked for the staff testimony and noted for the record that Mr. Stewart left the meeting. Ms. Chapman addressed the meeting on behalf of staff of FMB. She

read 2 letters that were received this morning from time-share residents of the adjoining property (see attached). One was from a weekly owner of Beach Club 1, unit 393, and it stated that the owners object to the rezoning. The other letter was from a weekly owner of Beach Club 1, #326, who also objected due to the impact the proposed building would have on their view and sunsets. She testified that the applicants did a thorough job in their presentation and their application. She said the property is within a V zone and the base flood elevation there is 17 ft. In general, staff agrees with the applicant's proposal and she addressed each segment.

Ms. Chapman referred to the first deviation, dealing with height from 30 ft, 3 stories to 35 ft, 4 stories, and said that the LDC dictates that height is measured from base flood elevation level, without roof structure measured in. She stated that the second deviation deals with the interior square footage and the applicant will amend their requested sf down closer to 9000 sf. Policy 4D1 was used to address this and it is consistent. Staff recommends the rezoning with the following conditions:

1-proposed buildings and all amenities must comply with the FEMA regulations at the time of the development order; 2-reiterate that the cupola remains uninhabitable space; 3-a commercial grade sprinkler and alarm system is included in the plans and installed at construction; 4-applicants must meet all environmental requirements of the LDC, including but not limited to dune vegetation and sea turtle lighting, etc.; 5-at the time of development order, the applicant must address all storm water issues and use best storm water practices to address any issues that remain on site; 6-applicant will provide any FL DEP approvals and permits, along with their development plans, at the time of their development order.

Ms. Shamp asked for LPA questions directed at staff. Mr. Kakatsch asked how many elevators were planned and the applicant answered that there is only one.

Mr. Van Duzer stated that Policy 4E1 says "up to the original square footage" but that is not what the applicant is proposing. Ms. Chapman replied that the Pre-Disaster plan allows for deviation, as does the Planned Development process to give flexibility in permitting. Mr. Fluegel added that under the policy it also states "existing lawful density and intensity." He said that 4C2 is the only place where the word "intensity" is used in relationship to commercial, so this is an area of "policy interpretation." He said that staff felt that there is enough latitude therein to address the sf or "intensity" issue.

Ms. Shamp asked what the maximum sf for the lot size normally, without a pre-existing structure. Ms. Miller referred to Table 34-3 wherein it talks about RM but it is confusing and she opined that an argument could be made to build to the setbacks and the maximum height.

Mr. Cameron asked if the rental units would then qualify this as a commercial use. Ms. Miller stated that that area is exempted.

Mr. Zuba said that this “troubles” him because it is a major increase in “density and intensity.” Mr. Fluegel attempted to clarify that “density” in this instance refers to the number of units and not the sf, which is “intensity.”

Mr. Fluegel said that this comes down to the intent of pre-disaster policies because property owners who want to make improvements, run into these problems of the “50% rule,” which dictates that “once the value of the improvement exceeds 50% of the depreciated value of the existing improvements,” the entire structure must be rebuilt in compliance with current FEMA standards, which are arduous and costly. He said that the basic intent of the policy is to create the economic incentive whereby an owner would want to build back and elevate. Mr. Zuba commented that he understands the intent of the Pre-Disaster build-back is to elevate and get a better unit; however, he questions whether “buying 6 ft. of elevation and the incentive for that is giving 10,000 sf of residential area” is a fair trade. He worries that this is a “very troublesome precedent.” Ms. Chapman pointed out that it is important to look at the context of each case; for example this property is located between 2 very tall, denser usage structures.

Short recess at 10:42 AM; reconvened at 10:59 AM.

Ms. Shamp opened public comment.

John Boucher, from Estero Island Beach Villas addressed the meeting, adding that his property is not a “time-share,” as referred to by the applicant, and said there are 42 units with 42 owners. This property shares a property line with the subject property. He gave a brief history of the property, which is now owned by the applicant, and said that there have been many complaints since they took over from the residents at the Villas, including having police respond to remove their renters from the Boucher’s pool. He said that this new proposal will make the already nuisance property “compounded by 3 times,” with the addition of units to rent. He said that the family dwelling approach is fine but the application says possible rental units, and even though the applicant says he’s willing to withdraw that, Mr. Boucher has no confidence in that promise because there is no way now to enforce the short term rental issue. He said that this proposal will go from 1680 sf interior cottage to 13,650 sf, adding that the public hasn’t been given the edited floor plan which just appeared today, and feels this is a huge deviation. Mr. Boucher said that the other deviation talks about the allowance from 30 ft. to 35 ft. and said that the “35 ft.” is really 60 ft. because there is 17 ft. FEMA regulated finished floor plus 35 ft. to the soffit and a peak that is about 8 ft., taking it up to 60 ft., making this a building about 38 ft. wide by over 60 ft. tall. He continued and pointed out that the application says that this proposed height “will not impact existing views of the Gulf of Mexico from adjacent properties;” he said that this is not so. He asked that the LPA consider the size, the negative impact on the adjacent properties, the “very unreasonable deviation requests” and the misleading statements in the application, and urged the LPA to recommend that this be denied.

Ms. Lucinda Keller addressed the meeting and said she has lived here for many years and seen this “Déjà vu” before and said it seems like the focus of the Town is on the NW area of the island and feels there is too much influence in some areas. She feels that there is too much favoritism for certain people and that granting this proposal is unfair.

Mr. Larry Crossman of 250 Estero Blvd., the Estero Island Beach Villas, and said that since the current owners have taken over the subject property, there have been constant problems with renters there disturbing the neighborhood with their disregard of the other properties. He said there are spring-breakers climbing over fences into neighbor’s pools, trashing properties, partying and having police respond to quiet them down and does not want to see this “times 3” with the addition of units. He added that it will also obstruct their view and said that there was never a problem with the previous owners for all the years they were there. He is opposed to the application.

Mr. Jim Schuster was sworn in and addressed the meeting. He said he has owned his unit at Beach Club 1 about 23 yrs. and he wanted to voice his concerns and represents several of the other owners there. These owners feel that their view will be constructed and they wanted to be on record that they object.

Ms. Shamp closed public comment and invited the applicant to present further testimony but he asked for Mr. Ryffel’s comments first.

Mr. Ryffel said that he used his background as a planner to research this so he could bring a different view to the board. He agreed that the applicant and staff reports are very similar so he referred to the staff report where he made his notations for comment. Mr. Ryffel pointed out the reference to a “single-family residential” on the first page because as it applies to 4E1 in the Comp Plan, this is an important factor. On pg 3, it discusses “historically documented units” and he said he has “real doubts about that” because a triplex is 3 dwelling units attached that each have a kitchen, a bath and a door. He said that he doesn’t see this on any of the cards provided and he feels that there is not sufficient evidence that this was ever a true triplex. On the same pg., the Pre-Disaster Build-back is described and Mr. Ryffel referred to 4E1 here which he said says that you can replace the same use, which is single family here, up to the original sf, which is 1680sf and not 13650sf. He added that if this gets approved he would like to see how staff comes up with justification of that kind of increase; he added that 4E1 specifies these things and he opined that changing it would need a Comp Plan amendment to change that wording. Therefore he feels that this zoning case is “premature.”

Mr. Ryffel continued to point out areas of concern, such as pg. 4 where it reads “additionally the proposed density of 3 units is a historically documented number,” and again said that this has not been adequately proven. He said that the Pre-Disaster plan “looks at what is there and not what used to be” which, in this case, is a single-family home, so he feels that is what the applicant is entitled to. Additionally, LDC

sec. 34-3237 dealing with describing a unit, partially states “*a rebuilt residential building may exceed the density limits on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.*” In this case, he continued, there is 1 unit in that building. Moving on to pg. 5, he referred to the paragraph which states “the residential uses and the historically documented 3 units do not exceed the general densities and intensities set forth in both the Comp Plan and the LDC.” However, he said that the acreage of the property now is 1.5, with 6500sf, and with 1 unit the density is 6.66; making this 3 units, the density will be about 20 units per acre so he feels that this usage will exceed the densities and intensities. He added that the general density in this area is 6 units per acre, the maximum. Mr. Ryffel discussed the Pink Shell and the position it was in a few years ago when they had 2 buildings and wanted to rebuild using the Pre-Disaster plan but add sf to it so they had to transfer some of the uses to their parcel across the street to be able to enlarge it; had they not been able to do so, they would only have been allowed the same sf that was already there. He said that the applicant is asking for a 900% increase in sf and feels that this is not reasonable and approval of this would be a “dangerous move.”

Ms. Shamp again gave the applicant an opportunity to speak. Mr. Hartzall said that the applicant still feels they meet the requirements of the staff report and all the LDC and Comp Plan points. He said one of the key components for rezoning in both codes relates to any changed conditions that warrant the rezoning. He said that looking at an existing building and deciding that rebuilding will be limited to what is there now is not economically feasible. He added that approval of this would guarantee that the new structure will be built to current standards allowing for a safer structure. He addressed a point made by Mr. Ryffel regarding “3 doors” and asked Ms. Crespo to again show slides that address the doors. He said he cannot explain how the structure got from the original triples to the current use. Mr. Ryffel interrupted to ask if there are the “required” 3 kitchens and baths and Mr. Hartzall said there are not but referred to the LDC Sec. 34-632 5c wherein it describes “lock-off units” being treated as density units or dwellings for the owner to rent them out, with or without kitchens.

Mr. Hartzall again referenced Comp Plan 4E1 in the staff report on pg. 3 wherein density (dwelling units) and intensity (square footage) up to the original sf and said it is a restriction on commercial square footage and not on residential sf. Furthermore, he pointed out the last sentence which states “*the Town Council may approve additional enclosed sf only if an existing building is being elevated on property that allows commercial uses.*” However, he continued that the LDC does have a restriction, which states that “the replacement building cannot exceed the density and intensity of the existing building as measured for residential buildings” and then points to the Post-Disaster section which restricts increasing the size from what was originally there. This is the reason, he explained, why the applicant is going through this process, to deal with this from a LDC basis. He insisted that applicants would not go through this difficult process for something this small normally. In addition, he reminded the members that with or without this approval, the applicant can put up a building even taller than what they are asking for, according to the new FEMA

standards, which would impact views more than this plan. Mr. Hartzall commented that he still questions the 1.2 floor area ratio and wonders if it applies to residential development and, if so, he would request that the LPA recommend a deviation to that requirement (in Table 34-3) to make it consistent with the 9000sf limitation for deviation #2. Ms. Shamp asked for clarification, as did other members, stating that they were confused. There was discussion of the dimension table, which gives an area ratio of 1.2 for RM and Ms. Miller agreed it is not clear. Mr. Fluegel commented that there are commercial uses allowed for RM zoning districts. Then, he added, going back to the Comp Plan to Policy 4C2, it is the only policy that refers to intensity, thus the purpose for having deviations.

Mr. Hartzall commented on condition 3, regarding the alarm and sprinkler system, and said he believes it relates to NFPA 13, but would like staff to clarify that.

Ms. Miller commented that the definition in the LDC for dwellings, they are not required to have kitchens but must have contained sleeping and sanitary facilities. She said the Pre-Disaster plan and said that its reference to "density and intensity" refers you back to the post-disaster build-back 34-3238, which states that a "rebuilt residential building may exceed the density when it is for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster." She added that it is up to the LPA to determine what is sufficient documentation to verify that.

Mr. Hartzall requested that the applicant's request for the rental units be withdrawn since it seems to be the biggest problem and, if it is removed, it should eliminate the need for condition 3. Mr. Fluegel asked if the applicant would go as far as to agree to a prohibition of short-term rentals. Mr. Hartzall agreed that by withdrawing this request, the applicant recognizes it would be a prohibited use but Mr. Fluegel insisted that it be specifically stated and the applicants agreed.

Mr. Kakatsch asked if they would consider withdrawing the height requirement of 35 ft. and keep the 30 ft. situation. Mr. Hartzall denied this request but said they might acknowledge this as a recommendation by the LPA.

LPA discussion: Mr. Ryffel asked Mr. Van Duzer about the hazard mitigation section, since he helped draft it, and asked if Policy 4E1 applies only to commercial. Mr. Van Duzer stated that his recollection is that it included residential structures. He said that everything on the beach side of Estero Blvd. is exempt from short-term rental restrictions anyway. Mr. Van Duzer said he would make a motion to deny this application until they have had an opportunity to consider all of the items in the Comp Plan and LDC and change them to bring them up to date and make them clear and consistent. He said that these codes need to be carefully revised to protect the residents and be sure they are all doing things according to the latest standards.

Ms. Shamp stated that they still need discussion before a motion but asked if there could be a show of hands as to a consensus about this. She asked if there was an

opposing view or if they are all in agreement. Mr. Kakatsch said that they need to facilitate people like the Rows but still try to keep the deviations to a minimum, thereby trying to live by the rules. He said that if they do not work with the applicant to make this happen, things will get worse and the property may be constantly rented to college kids and partiers. Mr. Kakatsch moved that the LPA go forward with this plan and upgrade the beach.

Ms. Kay favors bringing the whole plan down to 2 floors rather than 3 floors but she agrees with Mr. Kakatsch's comments about things getting worse.

Motion: Mr. Van Duzer moved that the LPA deny the Resolution 11-005 for the ROWE RPD.

Seconded by Mr. Ryffel;

Discussion: Mr. Ryffel agrees that they should work with the applicant but feels that if they vote for this, they are essentially throwing out the standards in the LDC and the Comp Plan.

Mr. Van Duzer again stated that he feels the Comp Plan needs to be edited and updated, not rewritten.

Mr. Kakatsch said that they should stay within as few exceptions as possible and allow the applicant to proceed.

Ms. Shamp said that her job is to make decisions based on the LDC and the Comp Plan, and not from personal opinions, even though she likes to see people who invest in the beach by attempting to do things to make it better. She said that they need to look better at Policy 4E1, which is Pre-disaster Build-back, and feels it is clear as to the sf, etc. requirements. In the Policy 4C34, which relates to the opportunity to apply for variances regarding height, it talks about the Town having the option to modify, approve or deny these requests and goes on to include that "particular attention would be paid to any permanent view quarters to the Gulf waters that could be provided in exchange for allowing a building to be taller than 2 stories." Ms. Shamp continued to refer to the various Policies and regulations and said they are very clear in that basically you can rebuild to what size existed before but not to gain a bigger structure.

Restated Motion: Mr. Van Duzer moved that the LPA deny the Resolution 11-005 for the ROWE RPD.

Seconded by Mr. Ryffel;

Vote: Motion passed 6-1, with Mr. Kakatsch casting the "nay" vote.

Ms. Shamp closed the hearing at 12:21 PM. There was a short break.
Reconvened at 12:30PM.

B. Mermaid Special Exception Hearing – FMBSEZ 2010-0003

Ms. Miller swore in the witnesses and staff confirmed the Notice of Public Hearing advertisement. Ms. Shamp polled members for ex-parte communications. Mr. Kakatsch had a site visit; Mr. Van Duzer knows the applicant; Ms. Shamp had a site visit, but there were no other communications.

Ms. Chapman presented the staff report regarding this request and said this was before the LPA in January but there has been a small amendment to the original request. The request is for a special exception in the downtown area to serve alcoholic beverages in an outdoor seating area at 1204 Estero Blvd. (she referred to a visual aid) in the form of a tiki hut in the rear and a small area in the front patio. She stated that staff recommends approval with the following conditions:

1-the subject property for outdoor consumption is combined with in the tiki hut and the front patio shown in the diagram and the applicant has proposed that a hedge will define the area in the front for consumption; 2-sales and service of alcohol will not begin earlier than 9:00Am and will not be any later than 2:00 AM; 3-audible entertainment is prohibited before 11:00AM and after 10:00 Pm Sunday through Thursday, and 11:00 AM and 11:00 PM on Friday and Saturdays, and will at all times be comply with the Town ordinances.

Ms. Chapman said that there was one letter received by the Town, from George Gannon, about this and Merlo's property, which she read for the record (see attached). The letter was to express Mr. Gannon's concern about a "night noise factor" which he feels will be created by allowing these COPS and said that there is a lack of enforcement on the part of the Town and law enforcement to control the "ongoing party atmosphere" that is happening on the beach, damaging the reputation of FMB as a destination for families. Mr. Gannon strongly objects to approval of these exceptions.

Scott Van Sullo, owner of the Mermaid Lounge and Liquors, addressed the meeting and pointed out there is outdoor seating across from his property at the Beach Doggy-Dog and next to him at a small restaurant.

LPA questions for the applicant: Ms. Kay asked if the outside rear plans have changed and the applicant said it has not, as he explained the slight change in the front part. He said his business will not allow any nuisance behavior like the Lani Kai does.

Mr. Ryffel asked for an explanation of where the deck is located and what it looks like. The applicant explained why the deck is there and that there is a plan for hedges.

Mr. Zuba asked how many seats exist and how many would be added by this approval. The applicant said it was calculated by sf rather than capacity. Ms. Chapman said they used the formula of 1 per 75sf for outdoor seating and referred to her diagrams, saying that they do meet the parking requirements. Mr. Zuba also asked if there will be some landscaping there and it was confirmed that there will be some added.

Ms. Shamp opened the floor for public comment. Ms. Lucinda Keller said that "in season, that area is a bottleneck" and said this "variance" should not be granted.

Mr. Lee Melsick and said that the applicant and his family have been here for years and should be trusted to do what they propose. He said that there is no reason to think there will be trouble or any problems with this business as these are good supporters of the community and they keep their word. He fully supports the approval of this request and feels that the improvements planned will “spruce up” that part of the boulevard.

Ms. Shamp closed public comment and the testimony portion of the hearing and asked for LPA discussion. Mr. Ryffel supports the application but would like to change the third condition regarding the music in front of the business. He pointed out that the applicant didn’t request it and he feels it should be taken out. The applicant commented that they have no intention of having any entertainment in front, except in the case of a special occasion, and then he would apply for a permit. Ms. Miller said it could just be edited to show the change.

Motion: Mr. Zuba moved to approve the application, as edited.

Seconded by Mr. Zuba;

Vote: Motion passed 7-0.

The hearing was closed at 12:54.

C. Merlo’s Special Exception-FMBSEZ2010-0006

Ms. Miller swore in the witnesses and staff confirmed the Notice of Public Hearing advertisement. Ms. Shamp polled members for ex-parte communications. Ms. Shamp and Mr. Ryffel had site visits only.

Staff testimony: Ms. Chapman testified that this is for a special exception in the downtown area to serve alcoholic beverages in an outdoor seating area (she referred to diagrams) in the downtown zoning district. Presently, the business serves food on the deck area but is not permitted to serve alcohol. She stated the business had been granted interior consumption on the premises with a stipulation that should they request outdoor alcohol service, they would need to provide additional parking for the increased sf. She state that this would be an additional 3 spaces and said that the owner also owns a parking lot adjacent to the business and Mr. Primo will supply the additional spaces.

Staff recommends approval of this special exception, with the following conditions: *1-the area for outdoor consumption be confined entirely on the 470sf deck; 2-signage will be posted to designate the extra parking spaces; 3-sales and service of alcohol will not begin earlier than 7:00Am and will not be any later than 12:00 midnight; audible entertainment is prohibited before 11:00AM and after 9:00 Pm 7 days a week, and will at all times be comply with the Town ordinances.*

Ms. Chapman read a letter received by the Town from Mr. George Gannon, owner of the Beacon Motel, in which he objects to the approval due to the noise nuisance it will create, adding that he has “lost guests from time to time because of these late into

the evening partying heightened by the drinking of alcoholic beverages...” (see letter).

Ms. Kay asked about a part of condition 1 (pg. 4 of 7) and Ms. Chapman stated it is just a technical phase used in the Comp Plan and there was an explanation by Ms. Miller.

Mr. Zuba asked about any landscaping requirements but Ms. Chapman stated the Town has not made that a condition because it is an elevated structure but would certain include this if suggested by the LPA.

Ms. Shamp asked about the hours of operation of the parking lot since the extra parking will be provided by that lot. Mr. ??? answered for the applicant and stated that there are no problems with that lot closing and there are signs on the spaces designating them for Merlo’s.

Mr. Ryffel asked if there is an easement or some type of written agreement for the applicant to use those spaces, especially in the event that the parking lot transfers ownership. Ms. Chapman stated that there was not because “Norm” owns both properties. Ms. Miller opined that language could be added to the resolution to provide this and thereby guarantee the use of the spaces.

Public comment was opened:

Ms. Lucinda Keller objected to the approval of this exception, stating that “if that right-of-way between Primo’s parking lot and that house is closed for coastal, fire whatever is needed in that area, I will take it to the state because I have a title to the property across the street...” and said “it will not happen!”

Mr. Lee Melsek addressed the meeting and he said this is yet another request for alcohol to be served “at the front doors of single-family homes” and outdoor entertainment also “at the front door of people’s homes.” He continued that “calling the cops isn’t always getting it done for these people.” He objects to the granting of these exceptions more and more because they violate the rights of the neighbors by playing their music loud and at night. Mr. Melsek pleaded with the board to “at some point address that issue,” suggesting that they begin doing that by denying this exception.

Mr. John Albion, President of the FMB Chamber of Commerce, stated that there are rules in place for all businesses and residents and he feels that this particular issue not be dealt with on a case-by-case basis. He said that this is a good business, the owners are “good people,” and he feels the Town should work with them when they are willing to “play by the rules.” He added that this is “critical for the future of FMB that there is a balance between commercial, restaurants, retail and taking care of the residents nearby.”

Public comment was closed and Ms. Shamp invited LPA discussion. Mr. Ryffel pointed out that the applicant did not request music so he opined that they limit this, adding that "they didn't ask for it and I'm not gonna approve it." He feels that there is no intent on the part of the applicant to have any music so he suggests taking that part out of the language.

Ms. Kay asked if currently are permitted to serve beer and wine and Ms. Chapman advised that they have a 2 COP license.

Motion: Mr. Ryffel moved to approve the application with the recommended conditions: Condition 3 is to read "music and audible entertainment are prohibited; signage must be installed at Norm's parking lot indicating which spaces are reserved exclusively for the subject property and owner shall obtain and record a parking easement for those spaces. The requested special exception is consistent, etc.; the requested special exception, as conditioned, exceeds all performance standards; the requested special exception, as conditioned will protect, conserve, etc.; the requested special exception, as conditioned will be compatible with the existing and planned uses and will not cause damage, nuisance or other detriment to persons or property; the requested special exception, as conditioned will be in compliance with general zoning provisions, etc.;

Seconded by Mr. Zuba;

Vote: Motion passed 7-0.

Hearing closed at 1:21 PM and there was a recess for lunch.
Reconvened at

(TRANSCRIBER'S NOTE: Recording was not started upon the reconvening of the meeting and started somewhere after adjourning as the LPA and beginning as the HPB, as conversation below reflects).

VI. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Mr. Van Duzer moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Zuba;

Vote: Motion passed 6-0 (Mr. Ryffel left).

Ms. Kay was talking about the Smith Cottage being historic and therefore not required to be raised to FEMA standards. The meeting will be June 23, 2011 at 11:30 AM for this.

Ms. Kay said that Mr. Zuba had suggested using a standard form of recognition of historic properties on the beach but Ms. Ekblad felt that it wouldn't really go anywhere. Ms. Ekblad clarified that there are the 3 different boards, the HPB, the HAC and the Estero Island Historic Society, and they need to work together to address these projects to eliminate duplication of efforts and resources.

Motion: Ms. Shamp moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Kakatsch;

Vote: Motion passed 7-0

VII. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 1:51 PM, with the same members still present.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

A. COP Policy Discussion

Mr. Fluegel referred to a memo given to members, with attachments, and gave a brief history of the development of this discussion. He stated that he was given the task of reviewing the Town's policy, Comp Plan and LDC influence regarding the subject and he didn't interpret the Comp Plan to prohibit alcohol on the beach. Later, Council rejected the LPA's interpretation, which was based on a consultant's report, and directed staff to prepare another approach to regulate this. In this memo, pg. 2 shows the different approaches he suggested and Council decided to use a more "administrative" approach, which was presented in a draft form at the last meeting.

Mr. Fluegel continued that there really is no current regulatory scheme for dealing with COP on the beach, there is no zoning control. He said what the Town does have is Chapter 4 in the Code of Ordinances, the "open container" law but it gives no authority to local enforcement officers to enforce it so these are reliant on the sheriff. He said that this lack of regulation and zoning enforcement has created a problem with the existing businesses that seem to be "grandfathered in" and they have no rules to be held to. Mr. Fluegel pointed out that the Town has already allowed commercial service-oriented uses in the EC zoning district, like Jet Ski, chair and parasail rentals.

Mr. Fluegel said that they came up with an administrative process, adding that there are currently 15 establishments presently that have liquor licenses and he feels that these can easily be dealt with in an administrative manner. New ones coming in can be handled differently, as special exceptions but he focused on the existing 15 and questioned how they should deal with resorts as opposed to the restaurants and in consideration of the location of each business. The proposal is to deal with them "as a whole" with a consistent set of rules but still asked for the LPA's recommendations and guidance.

Ms. Shamp thanked him for his patience and attention in responding to the LPA, especially after the last meeting, and was appreciative of his efforts to slow this down and help make the process more comprehensive.

Ms. Shamp asked for public comment:

Mr. Pat Sinono, owner of Nemo's On the Beach. He said what they need is "a fair playing field" for all businesses and agrees that there should be a fair standard.

Mr. Frank Schilling of 6672 Estero Blvd. congratulated the LPA for “opposing the spread of alcohol across the beach.” He said that in this case he does not side with the businessman, which he usually does, and opposes COP on the beach. He feels that the Council should deal with the major issues facing them rather than spending so much time and energy for on the handful of people who want to continue to expand the alcohol service on the beach.

Mr. Tom Babcock addressed the meeting and reminded that he has already supported the LPA’s resolution banning the expansion of alcohol on the beach. He feels that their interpretation of the Comp Plan was appropriate and allowed them to make the appropriate decision based on it. He said that most people’s opinion of the area is that it is a family beach and there are many places for adults to go and drink, if they choose to do so, without having to add more places. He pointed out that even Miami Beach has decided to move forward with a ban on sale and consumption of alcohol on the beach due to litter and rowdy people due to it. He added that the right place to deal with this is in the LDC where uses and regulations are defined and supports making changes in the LDC. He suggested that, should they make changes in the LDC, the 3 “grandfathered” businesses be given specific time periods to come into current compliance, adding that this is a zoning rather than property rights issue.

Mr. Bob Young addressed the meeting and commended the LPA for its past decisions on this issue. He also feels that this is a difficult issue but does not support expanding alcohol services throughout the beach as the code allows now.

Ms. Shamp asked for LPA discussion:

Mr. Fluegel commented first about a “separation of issues.” He said that there are a few issues to consider here, including the “open container” law which applies to anyone drinking on the beach. He said that that even the term “public beach” is not clear as it relates to private property and these regulations. Mr. Fluegel opined that his approach would address the 3 “grandfathered,” adding that it doesn’t mean they are “grandfathered for compliance with any future zoning requirements that go to health, safety and welfare issues. He also suggested a geographical limitation to keep certain regulations in specific areas and/or a conditional use permit, needing an annual performance evaluation with revocation measures.

Mr. Van Duzer referred to the 3 “grandfathered” businesses and asked if they owned out to the high-water line. Mr. Fluegel said he could not find anything to support that these people own to that line but Mr. Van Duzer said had come to the Town because they couldn’t serve alcohol on the beach according to the LDC and showed papers to support that they own to the high-water line. Due to that, the Council granted them the exception to serve alcohol there. Mr. Fluegel said it still crossed a zoning line and went into a different zoning district then. Ms. Miller agreed that, if this is true, anyone else who owns to that line, should have the same rights. Discussion ensued about the zoning lines and property owner rights to the high-water line.

Mr. Zuba asked how EC zones are defined and Mr. Fluegel replied that is coterminous with the 1978 Coastal Construction Control Line and pointed out that this is also coterminous with the Recreation Future Land Use Line. Mr. Zuba said that they do have the opportunity then to be able to regulate what goes on in that zoning district and referred to a memo by Jerry Murphy wherein he noted that if they found it to be an intrusion, they would have the ability to regulate COP in that district. Mr. Zuba feels that this is an intrusion and wondered why the open container law isn't of use in regulation. Ms. Miller replied that it applies to public and not private property.

Mr. Ryffel commented on a handout he had that was distributed by MRTF and read a sentence "all waterfront property on the island is privately owned; public use is permitted from the water to 10 ft. landward of the high tide line; 25 beach accesses and 3 public parks...provides legal access to the beaches." It goes on to discuss open containers and alcohol consumption "the drinking establishments along FMB have specific boundaries within which you may consume or in your possession open containers of alcoholic beverages...it is unlawful to consume or have in your possession an open container alcoholic beverage on a semi-public or public street, sidewalk, parkway, beach or parking lot located in the Town of FMB." Some discussion ensued about the differences between private and public beach areas.

Mr. Fluegel interjected that there is a requirement in the code that if the applicant property is within the 500 ft of a public park, he must apply for special exception for COP. He pointed out that the mean high-water line is public park line.

Ms. Shamp said that the fact that there is nothing in the code to enforce consumption means to her that COP on the beach was not an allowable use in the Comp Plan; therefore, when the LDC was written, they didn't regulate it because it wasn't allowed. Ms. Shamp said that she has reviewed this issue in the LDC and prepared a document with her views, which she passed out, and said that her research into the Comp Plan and the LDC has made her understand that this is not allowed in the LDC either. She referred attention to her second paragraph "in reviewing the LDC references are found to indicate that the proposed COP expansion is prohibited. LDC Sec 14-3A15 states that 'it is unlawful or prohibited for any person to do, conduct or permit any commercial activities on the beach or dunes not explicitly authorized by this code or other Town ordinances' and I do not see that COP on the beach is explicitly authorized. There exists no explicit authorization of the COP in the Comp Plan..." (see report). She continued that the LDC's strongest prohibition to the newest COP expansion is LDC sec 34-1574B wherein it states that "except in instances of overriding public interest, new roads, private land development or expansion of existing facilities within wetlands or sandy beaches that are designated in the recreation category in the FMB Comp Plan, shall be prohibited." LDC sec 34-652A designates the purpose of the EC zone is to designate that the preservation of the beach is critical to the Town and restricts it uses and Sec 34-652B says that the application is intended to prevent a public harm by precluding the use of land for purposes that adversely affect a defined public interest. Additionally, she points out that Sec 34-609 states that where there are conflicts between the LDC and the Comp

Plan regarding development and zoning districts, the Comp Plan will prevail. Sec. 34-652D states that “no land use in the EC zone shall be permitted by right, except those permitted by the FMB Comp Plan.” Ms. Shamp continued to read several paragraphs in her report which referred to specific sections of the LDC and the Comp Plan dealing with COP, restricted zones and applicable stipulations dealing with this issue. In summary, she opined that this is not allowed by the LDC.

Mr. Babcock commended Ms. Shamp for her intensive research, as did the other members and thanked her for her diligence and hard work in bringing this comprehensive report to light.

Mr. Ryffel said that personally he doesn't like expanding the COP but he understands that decisions have been made by “our boss and we are advisory to them.” He added that he “unalterably opposes” any administrative approvals of COP but he gave some options that he came up with. Recognizing that the existing COPs are in different places and went through different approval methods, he realizes that they need to be addressed in that light. One suggestion is “COP is permitted on the beach on any property up to within 50ft of the mean high tide with an existing COP license, and located in the Time Square area only, subject to any reasonable conditions including that alcohol must be purchased at an existing bar to be consumed on the beach; there will be no sales, wait staffed tables or carts of any kind however powered on the beach.” An alternative to that would be the same without prohibiting sales of wait staff. He then discussed properties outside of Time Square, with existing COPs, not including those for whom COP was approved as part of a planned development. These properties may seek approval via special exception, “alcohol must be purchased at an existing bar to be consumed on the beach up to within 50ft of the mean high tide; there will be no sales, wait staffed tables or carts of any kind however powered on the beach.” He feels that this will cover people who go into a bar, buy a drink and take it outside to sit on the adjacent beach. As far as the properties with COPs that were part of planned development, they “must request permission for consumption of the beach via an amendment to their approved planned development and “alcohol must be purchased at the existing bar and may be consumed on the beach up to 50ft of the mean high tide and there will be no sales, wait staffed tables or carts of any kind however powered on the beach.”

Mr. Ryffel's last suggestion says you can buy a drink in an existing bar and consume it on the sand but there will be no sale or service on the sand. He handed out copies of the document for review. Mr. Fluegel likes the options and said they address the issues of equity. Discussion took place about wait staff and the purpose they serve.

Ms. Kay wondered how they would address the existing places and they discussed the possibility of a “sunset” condition. Mr. Fluegel suggested taking Mr. Ryffel's option #2 to Council. Ms. Shamp pointed out that there is still a problem with area of the premises and Mr. Fluegel said it would need to be run by the state, too. More discussion took place about space and area as well as parking spaces designated for these businesses.

Ms. Shamp asked how underage drinking is controlled normally if someone has a COP on a premise. Ms. Miller said it usually just is regulated by the owner to ensure that no one underage is drinking. Code Enforcement Officer Shane Hidle replied and said that many places use a bracelet identifier for underage patrons.

Mr. Fluegel asked if there was a consensus direction on Mr. Ryffel's option to allow him to explore it.

Mr. Zuba, Mr. Cameron and Mr. Ryffel like this option; Mr. Van Duzer wants to see what happens with Town Council before he decides; Mr. Kakatsch is opposed to drinking on the beach, Mr. Van Duzer agreed with this and doesn't want to see any consumption on the beach; Ms. Kay feels that the beach should not be a place to drink; Ms. Shamp remains that she does not believe the Comp Plan or LDC support expansion but she realizes that the LPA has been charged with this task and she must work to bring the LPA to a decision. She feels that they have a 2-part question: do they approve drinking on the beach or, if Council passes it anyway, what restrictions do they suggest be put in place.

Mr. Fluegel asked if they would be agreeable to fashioning an ordinance that says that, as a board they still remain opposed to any expansion of COP in the EC zoning district; however, if it is allowed by Council, they would suggest the approach to take. This way they wouldn't be giving up their right to fundamentally be opposed to the expansion but they would be saying that this is the way to do it, if it is going to be approved anyway. Ms. Miller added that the LDC can be amended at any time and Council has directed them to do that for COP on the beach.

Mr. Ryffel said that he feels that the LPA looks at and understands the LDC and Comp Plans better than the Council because they need to as an advisory to the Council. He wants Ms. Shamp's research work attached to their recommendation and sent to Council so that they may see the work that was done and all of the areas that apply to this issue.

Ms. Shamp asked what Mr. Fluegel would like at this point, since he has been directed to get this done. He said that he would like to see an LPA resolution that memorializes their thoughts and show that they are still against this but that they include a suggestion as to how to proceed if it is going to get approval anyway. He said that staff will still go back and work on certain provisions when this comes back to the LPA next time. Ms. Shamp feels that a public hearing is premature and asked what the others thought. Mr. Van Duzer asked Mr. Ryffel if he agrees with Ms. Shamp and he said he does. Mr. Van Duzer was ready to make a motion to send it back to Council and tell them that the LPA does not want anything to do with COP expansion. Mr. Zuba said that Council members need to be made aware of the liability issues in passing this. Ms. Kay wondered how this could be acceptable if the whole thing requires amending the LDC. Mr. Ryffel said that if something is to go forward, he insists that their reports and options go along with their recommendation. Mr. Cameron agrees that there should be a recommendation to Council, letting them

know that they were split on their decision to allow any alcohol whatsoever, but if they must go forward, they should consider the LPA's recommendations. Mr. Zuba said he is not so opposed to option #2 and is not sure he would say no alcohol completely but he would like to see this discussed further. There was brief discussion about the options and Ms. Shamp opined that they need to work on this a little longer but they would like some of the laws after Mr. Fluegel's meetings with state officials. Mr. Fluegel agreed and hopes that they can have a workshop before it moves on, adding that he hopes to meet with LPA members separately if agreed.

Ms. Shamp asked for further public comment and Mr. Schilling addressed the meeting, saying that he is appalled that the Town Council would even consider moving ahead with this when the Code and Comp Plans both regulate against it. He thinks that the LPA has valuable experience and obvious knowledge and it is time Council listened to what they say.

Mr. Lee Melsek said that Mr. Ryffel's compromise is not solving the problem and it does not stop the spread of alcohol on the beach. He said there is no difference if a waiter takes the drink out or the patron does it himself. He said that both Mr. Van Duzer and Kakatsch are right in standing up for the solid principles they stood on and directed them to challenge the Council, asking "otherwise, why are you guys here?" He said that it is wrong for Council to violate the LDC and go against the idea of making this a family beach. He said they are here for the community and "not to be puppets of the Council."

Ms. Babcock asked if this resolution would make the beach a better place to live or work. She said that if they must pass this that there be strict rules to protect the residents and wondered why there is such a rush to get this through. She is confused about the LPA's position as an advisory board when they are so knowledgeable yet the Council doesn't listen.

Public comment closed.

IX. LPA MEMBER ITEMS AND REPORTS

Nothing to report.

X. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

XI. LPA ACTION LIST REVIEW

Resolutions to Town Council

- Special exceptions-Mermaid Lounge
- Merlo CPD-TBD

Future Work Activities

- ROW Residential Connection; Van Duzer-TBD
- LDC 613-14 10-255 Storm Water-TBD

- Post-disaster reconstruction/recovery-TBD; Ms. Miller
- IPMC (code enforcement clean-up) possibly June-all LPA
- COP ordinance

XII. ADJOURNMENT

Motion: Mr. Ryffel moved to adjourn.

Seconded by Mr. Cameron;

Vote: Motion passes 6-0 (Mr. Kakatsch left).

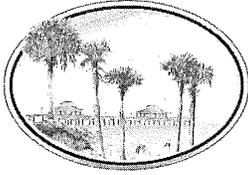
Meeting adjourned at 4:09 PM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

- End of document

DRAFT



Town of Fort Myers Beach
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT

TYPE OF CASE: Planned Development Rezoning
CASE NUMBER: DCI2011-0002
LPA HEARING DATE: May 10, 2011
LPA HEARING TIME: 9:00 am

I. APPLICATION SUMMARY

Applicant: Christopher & Henrietta Rowe

Request: A rezoning of 324 Estero Boulevard from Residential Multifamily (RM) to Residential Planned Development (RPD) utilizing the pre-disaster buildback provision found in Section 34-3237 of the Fort Myers Beach Land Development Code.

Subject property: Gulf Shore
Plat Book 9, Page 88
Lot 1

Physical Address: 324 Estero Boulevard

STRAP #: 24-46-23-W-00900.0010

Parcel Size: .43 AC

FLU: Mixed Residential

Zoning: Residential Multifamily (RM)

Current use(s): Single Family Residential

Adjacent zoning and land uses:

North:	Pink Shell Resort COMMERCIAL PLANNED DEVELOPMENT (CPD) Mixed Residential
South:	Beach ENVIRONMENTALLY CRITICAL (EC) Recreation
East:	Island Shore Condominium RESIDENTIAL MULTIFAMILY (RM) Mixed Residential
West:	Pink Shell Resort COMMERCIAL PLANNED DEVELOPMENT (CPD) Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

The subject property is located at 324 Estero Boulevard on the north end of Estero Island. Christopher and Henrietta Rowe purchased the subject property in April 2010. The existing structure was constructed in 1963 per the Lee County Property Appraiser and, while it is a raised structure, with the recent change in flood regulations it is no longer in compliance with Federal Emergency Management Agency's (FEMA) base flood elevation for that location on the island.

The applicant proposes the redevelopment of the subject property by utilizing Residential Planned Development process and the pre-disaster buildback policy mentioned in Objective 4-3 and Policy 4-E-1 in the Town of Fort Myers Beach Comprehensive Plan and in Section 34-3237 of the Land Development Code (LDC).

The subject property is located in a VE (velocity) flood zone and will be required to elevate to a Base Flood Elevation of 17 feet. Currently, the subject property is elevated to a finished floor elevation of 11.3 feet (see applicant Exhibit 5-2, Boundary Survey), this request will result in an elevation of approximately 6 additional feet.

A new three story, three unit residential structure over parking will replace the existing stilt frame building. The redevelopment proposal meets the required front setback of 25 feet, the existing side setbacks of 5 feet, and does not develop any permanent structures seaward of the 1978 coastal construction line.

Applicant Exhibit D-2-3 depicts the requested Schedule of Uses for the subject property. When approved by Town Council, the uses on this list will be the only permitted and allowable uses for the subject property.

Analysis:

The applicant proposes the redevelopment of the subject property by utilizing Residential Planned Development process and the pre-disaster buildback policy mentioned in Objective 4-3 and Policy 4-E-1 in the Town of Fort Myers Beach Comprehensive Plan and in Section 34-3237 of the Land Development Code (LDC).

The subject property is in the Mixed Residential future land use category and as such is only entitled to one residential unit. However, the applicant has demonstrated, with Lee County Property Appraiser field cards (see applicant Exhibit D-4-2), three historically documented units and is requesting to rebuild those units per the provisions found in Section 34-3237(4)(a).

The language in Objective 4-E reads *“Mitigate the potential effects of hurricanes by easing regulations that impede the strengthening of existing buildings, by encouraging the relocation of vulnerable structures and facilities, and by allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm.* This language makes it very clear that residents and property owners that wish to mitigate the potential negative impacts of hurricane, storm and flood damage prior to their occurrence should be encouraged and assisted in the process by Town Staff. The applicant intends to redevelop their property in such a manner as to remain in compliance with the LDC, except where deviations are requested, while also improving the health, safety and welfare of the surrounding area by bringing the new structure up to current FEMA base flood elevation requirements.

In addition to Objective 4-E, Policy 4-E-1 goes on to provide further specific direction and considers the allowance of expansion of square footage, as is proposed in this request. *POLICY 4-E-1 PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace for the same use at up to the existing lawful density and intensity (up to the original square footage) prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. The Town Council may approve additional enclosed square-footage only if an existing building is being elevated on property that allows commercial uses; dry-flood- proofed commercial space at ground level could be permitted in addition to the replacement of the pre-existing enclosed square footage.*

While the provision in this policy relates specifically to the expansion of square footage for Commercial Uses, the policy should be viewed in the context of overall hazard mitigation and easing of regulatory barriers to bring compliance with FEMA

standards. It should also be noted that recent changes in FEMA requirements have imposed additional barriers to reconstruction, which include, but are not limited to, items such as elevation of electrical systems, impact resistant windows and increased roofing standards, concrete support pilings, etc. These additional and costly measures can greatly increase the economic commitment required for reconstruction and thereby discourage redevelopment of non-conforming structures. The sum total of which results in increased National Flood Insurance Program rates for all of the Town's residents. Accordingly, in context of the policy language, it appears reasonable for the request to increase square footage under the pre-disaster buildback provision to be handled as a deviation through the requested RPD zoning process.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of a planned development rezoning found in Section 34-85 and 34-216 of the LDC, Staff makes the following findings and conclusions:

1. *Whether there exists changed or changing conditions which make the approval of the request appropriate.*

The area surrounding the subject property has changed over the past years, with the development of mid-rise and high-rise resort condominiums to the east and west. With resort units and condominiums on both sides of the subject property that range in height from 6 to 8 stories, the proposed 35' building is more compatible in terms of height than the existing single-story stilt frame structure. Additionally, the proposed density of three units is the historically documented number of units shown on the Lee County Property Appraisers field cards (see the applicant Exhibit D-2-4).

2. *The impact of a proposed change on the intent of Chapter 34.*

The proposed rezoning will implement the Town's pre-disaster buildback policy and allow for the appropriate infill redevelopment of the subject property. The provisions to accomplish the applicant's request can be found in Section 34-3237 of the LDC and Policy 4-E-1 as discussed in the Staff analysis section. This is a request contemplated and even encouraged by the Comprehensive Plan and Land Development Code. The proposed redevelopment will result in improved health, safety and welfare of the surrounding properties, as well as the subject property, by bringing the building into compliance with current the FEMA flood elevation requirements. It is Staff's opinion that the proposed change is consistent with the intent of Chapter 34 of the LDC.

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

As discussed in the Staff analysis and in applicant's Exhibit D-1-C, attached, the proposed RPD is consistent with the Comprehensive Plan, specifically the policies pertaining to the Mixed Residential future land use category and the pre-disaster buildback. The residential uses and the historically documented three units do not exceed the general densities and intensities set forth in both the Comprehensive Plan and LDC. Additionally, this request will further the Town's goal of reducing flood insurance rates for residents by bringing another non-conforming unit into compliance with current FEMA standards.

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

The proposed use is residential in nature and therefore is not required to comply with any performance or locational standards.

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

The proposed redevelopment at the subject property is infill in nature and as such the current urban services available at the site will also be available when the project is complete.

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

In accordance with current Land Development Code regulations, no portion of the subject property that falls within the Environmentally Critical (EC) zoning district has been included in the RPD request thereby protecting, conserving and preserving these sensitive environmental lands. It should also be noted that the applicant has entered into an agreement with the Town to allow for beach re-nourishment within the subject property.

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

It is Staff's opinion that the requested RPD is compatible with the surrounding properties. As an infill project, the subject property has the benefit of being designed to fit within its neighborhood context while still coming into compliance with the current FEMA regulations and improving the overall aesthetics of the area. The request, as proposed, will create no damage, hazard, nuisance or other detriments to persons or property.

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

The Community Development Director has waived the Traffic Impact Statement in a memo dated April 13, 2011, which is included as Exhibit A, thereby determining that the proposed development will have no net impact or burden on the transportation services of the Town.

9. *The deviations granted:*
- a. *Enhance the achievement of objectives of the planned development;*
 - b. *Preserve and promote the general intent of the LDC to protect the public health, safety and welfare; and*
 - c. *Operates to the benefit, or at least not to the detriment, of the public interest; and*
 - d. *Is consistent with the Fort Myers Beach Comprehensive Plan.*

The following deviations are proposed by the applicant:

Deviation #1

Deviation from Table 34-3 of the LDC, which allows for a maximum height of 30 feet/3 stories, to allow for a maximum height of 35 feet/4 stories.

For the applicant's justification of deviation #1 please see applicant Exhibit D-1-F.

Staff recommends approval of Deviation #1, as the request has no detrimental impact to the public interest and enhances the objective of the proposed planned development. Furthermore, the request is considered in Policy 4-C-4 where the Comprehensive Plan considers the allowance of additional height in situations where a property is surrounded by taller structures. The policy mentions, *"In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories."* The policy is supportive of the request for a height deviation. Additionally, granting the increase in height is a way to amortize the economic burden associated with compliance with the current FEMA standards and thereby promoting the

health, safety, and welfare of the entire island while reducing the flood insurance liability of non-conforming structures.

Deviation #2

Deviation from Section 34-3237(4) which requires total interior square footage of a rebuilt dwelling not to exceed the interior square footage of the original dwelling unit, to allow for an increase of interior square footage to permit the proposed 13,650 square foot condominium.

For the applicant's justification of deviation #2 please see applicant Exhibit D-1-F.

Staff recommends approval of Deviation #2, as the request has no detrimental impact to the public interest and enhances the objective of the proposed planned development. If Town Council is in support of the additional height requested in Deviation #1 and acknowledges upon review of the Lee County Property Appraisers field cards the documented and historic three units on the subject property, then also allowing the increase of square footage will have little to no perceived impact on the surrounding property owners. Furthermore, Policy 4-D-1 gives Council the ability to grant additional relief for property owners. Policy 4-D-1 states: *".....the Town may establish blanket reductions in non-vital development regulations (e.g. buffering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to reconstruction."* The policy is supportive of the request for additional square footage. Additionally, granting the increase in square footage is a way to amortize the economic burden associated with compliance with the current FEMA standards and thereby promoting the health, safety, and welfare of the entire island while reducing the flood insurance liability of non-conforming structures.

III. RECOMMENDATION

With consideration of the current and existing conditions, Staff recommends **APPROVAL** of the requested rezoning from Residential Multifamily (RM) to Residential Planned Development (RPD). Limitations and conditions are for Town Council to determine at the time of Public Hearing, however should Town Council choose to approve the requested rezoning, Staff recommends the approval be subject to the following conditions:

1. The proposed building and all proposed amenities must comply with all FEMA regulations in effect at the time of Development Order and all provisions found in LDC Chapter 34-3237, excluding the requested and approved deviations.

2. The mechanical cupola illustrated on applicant's Exhibit D-2-2 must remain non-habitable space.
3. A commercial grade sprinkler and alarm system(s) that meet all Florida fire codes must be included in Development Order plans and installed at the time of construction.
4. Applicant must meet all applicable environmental requirements of the LDC, including but not limited to protection of dune vegetation and appropriate sea turtle lighting.
5. At the time of Development Order, applicant must adhere to best stormwater management practices and all applicable LDC sections pertaining to stormwater and drainage when addressing the on-site stormwater conditions.
6. Applicant will provide any and all required Florida Department of Environmental Protection approvals and permits at the time of Development Order.

IV. CONCLUSION

Rezoning the property from Residential Multifamily to Residential Planned Development is consistent with Mixed Residential future land use as contemplated in the Fort Myers Beach Comprehensive Plan. This request would not adversely affect the surrounding properties and would allow the applicant the fullest use of the subject property.

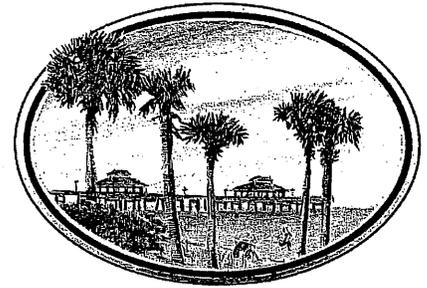
If Town Council finds that the requested use is contrary to the public interest or the health, safety, comfort, convenience, and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-85 regarding Rezoning, Town Council should deny the request as provided in LDC Section 34-85(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience, or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested rezoning. Staff has recommended conditions for the Town Council's convenience and consideration.

Staff recommends **APPROVAL** of the requested rezoning, as conditioned.

Exhibits:

Exhibit A – Traffic Impact Waiver memo

EXHIBIT (A)



Town of Fort Myers Beach

Memorandum

To: Leslee Chapman, Zoning Coordinator
From: Walter, Fluegel, Community Development Director
CC:
Date: April 13, 2011
Re: DCI2011-0002 Rowe RPD

I have reviewed the Planned Development Rezoning submittal requirements, contained in LDC Section 34-212 and determined that pursuant to Sections 34-202 and 34-203, the requirement for a Traffic Impact Statement can be waived. Based upon the proposed development plan and the pre-disaster buildback policy of LDC Section 34-3237, should Town Council determine that they are eligible for the proposed density per this provision, then there would be no net traffic impact from the proposed planned development rezoning.

Rowe Residential Planned Development

Application for Residential Planned Development
March 16, 2011

Submitted To:

Community Development Department
Town of Fort Myers Beach
2523 Estero Blvd.
Fort Myers Beach, FL 33931

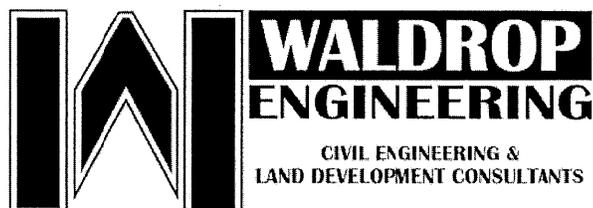


Table of Contents

Public Hearing Application & Affidavits

Supplement D Application

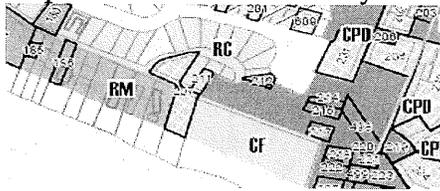
Exhibits

Exhibit 1-1	Additional Agents
Exhibit 3-1	Approved Waiver
Exhibit 5-1	Plat
Exhibit 5-2	Boundary Survey
Exhibit 5-3	Aerial Location Map
Exhibit 5-6-8	Variance Report
Exhibit D-1-C	Comprehensive Plan Compliance Narrative
Exhibit D-1-E	Decision-Making Compliance Narrative
Exhibit D-1-F	Schedule of Deviations & Justifications
Exhibit D-2-1	Master Concept Plan
Exhibit D-2-2	Architectural Elevations
Exhibit D-2-3	Schedule of Uses
Exhibit D-2-4	1978 Property Appraiser Card

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach Department of Community Development



Zoning Division

Application for Public Hearing

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

Project Name: Rowe Planned Development
Authorized Applicant: Alexis V. Crespo, AICP, LEED AP
LeePA STRAP Number(s): 24-46-23-W1-00900.0010

Current Property Status: Single-Family Residential
Current Zoning: Residential Multifamily (RM)
Future Land Use Map (FLUM) Category: Mixed Residential (MR)
Platted Overlay? __yes <u>X</u> no FLUM Density Range: 6 du/acre

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input checked="" type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

Town of Fort Myers Beach
Department of Community Development
2523 Estero Boulevard
Fort Myers Beach, FL 33931
(239) 765-0202

PART I – General Information

A. Applicant:

Name(s): Christopher & Henrietta Rowe
Address: Street: 16256 Edgemont Dr.
City: Fort Myers State: FL Zip Code: 33908
Phone: (239) 437-6038
Fax: -----
E-mail address: kithet@gmail.com

B. Relationship of applicant to property (check appropriate response)

<input checked="" type="checkbox"/> Owner (indicate form of ownership below)
<input checked="" type="checkbox"/> Individual (or husband/wife) <input type="checkbox"/> Partnership
<input type="checkbox"/> Land Trust <input type="checkbox"/> Association
<input type="checkbox"/> Corporation <input type="checkbox"/> Condominium
<input type="checkbox"/> Subdivision <input type="checkbox"/> Timeshare Condo
<input type="checkbox"/> Authorized representative (attach authorization(s) as Exhibit AA-1)
<input type="checkbox"/> Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)
<input type="checkbox"/> Town of Fort Myers Beach (Date of Authorization: _____)

C. Agent authorized to receive all correspondence:

Name: Waldrop Engineering, P.A.
Mailing address: Street: 28100 Bonita Grande Dr., #305
City: Bonita Springs State: FL Zip Code: 34135
Contact Person: Alexis Crespo, AICP LEED AP
Phone: (239) 405-7777 Fax: (239) 405-7899
E-mail address: alexisc@waldropengineering.com

D. Other agents:

Name(s): SEE EXHIBIT "1-D" ATTACHED
Mailing address: Street:
City: State: Zip Code:
Phone: Fax:
E-mail address:

Use additional sheets if necessary, and attach to this page.

PART II – Nature of Request

Requested Action (check applicable actions):

<input type="checkbox"/> Special Exception for:
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to:
<input checked="" type="checkbox"/> Planned Development
<input checked="" type="checkbox"/> Rezoning (or amendment) from RM to: RPD
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to:
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

PART III – Waivers

Waivers from application submittal requirements: Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director’s approval(s) as Exhibit 3-1.

Code Section Number	Describe Item
34-212 (6)	Traffic Impact Statement

PART IV – Property Ownership

<input checked="" type="checkbox"/> Single owner (individual or husband and wife)
Name: Christopher & Henrietta Rowe
Address: Street: 16256 Edgemont Dr.
City: Fort Myers State: FL Zip Code: 33908
Phone: (239) 437-6038 Fax: (239)
E-mail Address: kithet@gmail.com

<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1 N/A
Attach list of property owners as Exhibit 4-2 N/A
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved N/A
For condominiums, timeshare condominiums, and subdivisions, see instructions.

PART V – Property Information

A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name: Gulf Shore
Plat Book Number: 9 Page: 88 Unit: Block: Lot: 1
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. 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.
--

C. STRAP Number(s):

24-46-23-W1-00900.0010

D Property Dimensions:

Area:	6,500+/- square feet	acres
Width along roadway:	25 feet	Depth: 100+/- feet

E. Property Street Address:

324 Estero Blvd., Fort Myers Beach, FL 33931
--

PART VI – Affidavit

Application Signed by Individual Owner or Authorized Applicant

I, Christopher Rowe, swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

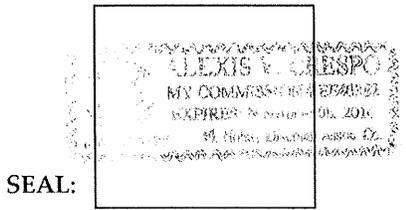
1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data, or other supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

 Signature CR Christopher Rowe
 Typed or Printed Name

State of Florida
 County of Lee

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 2/2/11 by Christopher Rowe
 (date) (name of person under oath or affirmation)
 who is personally known to me or produced _____
 (type of identification)
 as identification.

 Signature of person administering oath Alexis Crespo
 Typed or Printed Name



AFFIDAVIT

The Town of Fort Myers Beach in review of applications may refer any such application presented to it, to an engineering, planning, environmental, traffic, or any other technical consultant deemed necessary to enable it to review such application as required by law. The charges made by such consultants will be in accord with such charges and fees usually made for such services in the Greater Fort Myers Metropolitan Area or pursuant to an existing contractual agreement with the Town of Fort Myers Beach. Outside consultant fees will be passed through to the applicant at 103% of the rate billed to the Town by the consultant. The applicant shall reimburse the Town for the cost of such consultant services upon receipt of the bill. Such reimbursement shall be made prior to the final action on the application.

Final approvals and/or permits shall not be issued until the bill is paid in full.

I have read and understand the above statements

C. Rowe
Signature of owner

03/11/2011
Date

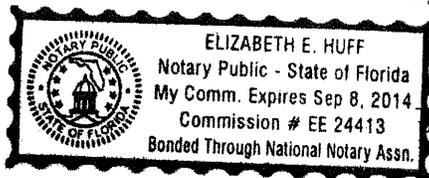
CHRISTOPHER ROWE
Typed or printed name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me March 11, 2011 (date), by Christopher Rowe, who is personally known to me or who has produced Ontario Driver license as identification.

(SEAL)

Elizabeth E. Huff
Signature of notary public



Elizabeth E. Huff
Printed name of notary public

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.

Please refer to Exhibit "D-1-C" attached.

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.

N/A. The project consists of a 3 unit condominium with accessory uses and parking.

Rowe Residential Planned Deveopment

Exhibit 1-1 Additional Agents

Contact: Mr. Steve Hartsell

Company: Pavese Law Firm

Street: 1833 Hendry Street **City:** Fort Myers **State:** FL **Zip Code:** 33901

Phone: (239) 336-6244 **Fax:** (239) 332-2243 **Email:** stevehartsell@paveselaw.com

Contact: Mr. Strickland Smith, P.E.

Company: Waldrop Engineering, P.A.

Street: 28100 Bonita Grande Dr., Suite 305 **City:** Bonita Springs **State:** FL **Zip Code:** 34135

Phone: (239) 405-7777 **Fax:** (239) 405-7899 **Email:** stricklands@waldropengineering.com

Contact: Mr. Richard Guzman, AIBD

Company: G2 Architecture

Street: 28071 Vanderbilt Dr. **City:** Bonita Springs **State:** FL **Zip Code:** 34134

Phone: (239) 949-2929 **Fax:** (239) 949-2931 **Email:** G2archinc@gmail.com

Contact: Mr. Scott Whitaker, PSM

Company: Bean, Whitaker, Lutz and Kareh, Inc.

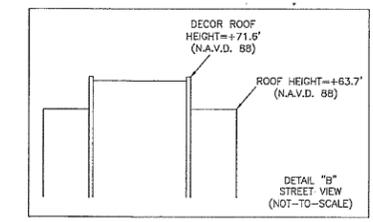
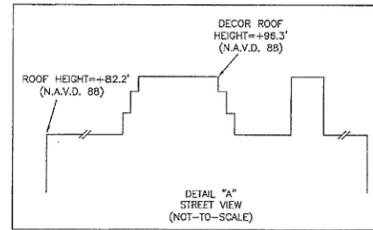
Street: 13041 McGregor Blvd. **City:** Fort Myers **State:** FL **Zip Code:** 33919

Phone: (239) 481-13331 **Fax:** (239) 481-1073 **Email:** scott@bwlk.net

SURVEY PLAT

OF
 LOT 1, GULFSHORE
 A SUBDIVISION RECORDED IN PLAT BOOK 9 AT PAGE 88,
 PUBLIC RECORDS OF LEE COUNTY
 LYING IN
 SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

- LEGEND**
- ⊠ = STORM MANHOLE
 - ⊡ = BURIED CABLE MARKER
 - ⊞ = ELECTRIC METER
 - ⊞ = ELECTRIC BOX
 - ⊞ = LIGHT POLE
 - ⊞ = WOOD POWER POLE
 - ⊞ = CONCRETE POWER POLE
 - ⊞ = DUY WIRE
 - ⊞ = CATCH BASIN
 - ⊞ = IRRIGATION VALVE
 - ⊞ = WATER VALVE
 - ⊞ = SANITARY MANHOLE
 - ⊞ = TELEPHONE BOX
 - ⊞ = FIRE HYDRANT
 - ⊞ = ELECTRIC SERVICE POLE
 - ⊞ = CABLE TELEVISION BOX
 - ⊞ = TRANSFORMER
 - ⊞ = WATER METER
 - ⊞ = SANITARY SERVICE
 - ⊞ = SIGN
 - ⊞ = CONCRETE PILING
 - ⊞ = WOOD PILING
 - ⊞ = MAIL BOX
 - ⊞ = TELEPHONE MANHOLE
- ABBREVIATIONS:**
- P.B. = PLAT BOOK
 - P.C. = POINT OF CURVE
 - P.T. = POINT OF TANGENCY
 - P.I. = POINT OF INTERSECTION
 - P.R.C. = POINT OF REVERSE CURVE
 - I.R. = IRON ROD
 - I.R.C. = IRON ROD WITH CAP
 - C.M. = CONCRETE MONUMENT
 - P.C.P. = PERMANENT CONTROL POINT
 - P.R.M. = PERMANENT REFERENCE MONUMENT
 - CONC. = CONCRETE
 - E.O.P. = EDGE OF PAVEMENT
 - M. = MEASURED
 - N/D = NAIL AND DISK
 - EL. = ELEVATION
 - R.M. = BENCH MARK
 - P.U.E. = PUBLIC UTILITY EASEMENT
 - DR. = DRAINAGE
 - P. = PLAT
 - T.O.B. = TOP OF BANK
 - D.S. = DEED BOOK
 - O.R. = OFFICIAL RECORDS BOOK
 - P.G. = PAGE
 - F. = FIELD
 - C. = CALCULATED
 - FF = FINISH FLOOR
 - LE. = LEVEL ELEVATION
 - R.C.P. = REINFORCED CONCRETE PIPE
 - C.B. = CATCH BASIN
 - MH = MANHOLE
 - PK = PARKER KALON
 - OH = OVERHEAD LINES
 - D = DEED
- N.A.V.D. = NORTH AMERICAN VERTICAL DATUM
 N.G.V.D. = NATIONAL GEODETIC VERTICAL DATUM
 E.C.L. = EROSION CONTROL LINE



AREA CALCULATIONS

AREA TO APPROXIMATE MEAN HIGH WATER	0.33 ACRES (14,578 SQUARE FEET), MORE OR LESS
AREA TO EROSION CONTROL LINE	0.43 ACRES (18,831 SQUARE FEET), MORE OR LESS
AREA TO COASTAL CONSTRUCTION SETBACK LINE	0.15 ACRES (6,567 SQUARE FEET), MORE OR LESS

NOTES:
 SURVEY BASED ON THE RECORD PLAT AND FOUND MONUMENTATION.
 BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM-FL WEST ZONE NAD 83/90 ADJUSTMENT WITH THE SOUTHERLY LINE OF LOT 1 AS BEARING N47°55'03"E.
 DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.
 ELEVATIONS ARE BASED ON N.A.V.D. OF 1988 AND U.S.C&G.S. F-245.
 THIS SURVEY MAY NOT CONTAIN SUFFICIENT DETAIL FOR DESIGN PURPOSES.
 PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
 PER THE NEW FEMA FLOOD MAPS, THIS PARCEL LIES IN FLOOD ZONE VE, BASE FLOOD ELEVATION OF +17' AND +20' (N.A.V.D. 1988) PER FLOOD INSURANCE RATE MAP NUMBER 12071C0554F, EFFECTIVE DATE AND INDEX DATE BEING 8-28-08 (COMMUNITY NAME: TOWN OF FORT MYERS BEACH AND COMMUNITY NUMBER 120673).
 THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.
 IRON RODS "SET" ARE 5/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. LB4819.
 UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
 WETLANDS, IF ANY, WERE NOT LOCATED.
 THIS PLAT PREPARED AS A BOUNDARY SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.
 THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.
 DATE OF LAST FIELD WORK: 3-3-11.
 SURVEY MEETS OR EXCEEDS THE ACCURACY STANDARDS OF AN URBAN SURVEY (1:15,000).
 SITE GEOGRAPHIC LOCATION LATITUDE 26°27'35.5" NORTH LONGITUDE 81°57'52.0" WEST.
 STRAP No: 24-46-23-W1-00900.0010.
 ADDRESS: 324 ESTERO BLVD, FORT MYERS BEACH, FL 33931.

SPECIAL NOTE:
 THIS SITE LIES SEAWARD OF THE COASTAL CONSTRUCTION CONTROL LINE AND IS SUBJECT TO PERMITTING REQUIREMENTS ESTABLISHED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
 BEAN, WHITAKER, LUTZ & KAREH, INC.
 SCOTT C. WHITAKER, P.S.M., NO. 154324
 PROFESSIONAL SURVEYOR & MAPPER
 STATE OF FLORIDA
 - THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
 - IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
 - THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

ROWE-BOUNDARY SURVEY

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
 CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
 13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

SR40974.DWC

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
5-6-10	40974	S.PIERCE	1" = 20'	1 OF 1	24-46-23

REVISED: 3-15-11 REMOVED LEGAL NOTATION
 REVISED: 3-3-11 UPDATE SURVEY & ADD ROOF HEIGHTS

LOT 1 GULFSHORE SUBDIVISION P.B. 9 PG. 88

GULFSHORE

A RESUBDIVISION OF LOT 32 AND PART OF LOTS 31 AND 33

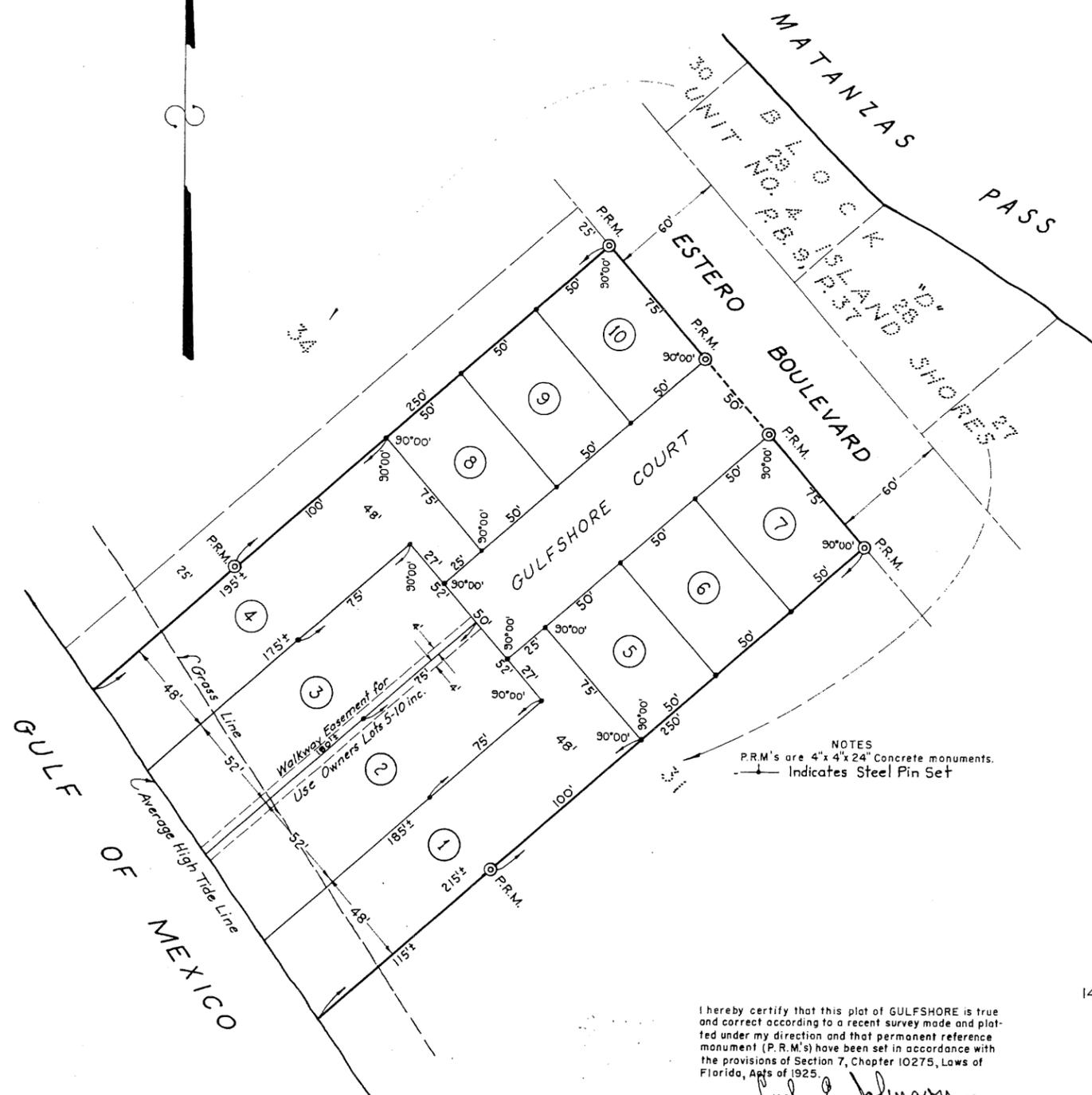
UNIT NO. 4, ISLAND SHORES

(According to Plat Recorded Plat Book 9, Page 37)

SECTION 24, T.46S., R.23E. LEE COUNTY, FLORIDA

Scale: 1" = 40'

September, 1953



NOTES
 P.R.M.'s are 4"x4"x24" Concrete monuments.
 — Indicates Steel Pin Set

DESCRIPTION

A strip of land 200 feet wide extending from Estero Boulevard to the Gulf of Mexico, being the northwesterly 25 feet of Lot 31, all of Lot 32 and the southwesterly 75 feet of Lot 33 in Unit No. 4, Island Shores, according to plat recorded in Plat Book 9 at Page 37, public records of Lee County; in Section 24, Township 46 South, Range 23 East.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS that George E. Adams and Leah N. Adams, husband and wife, and M.L. Harvey, Trustee, a single woman, the owners of the various parcels comprising the hereon described lands have caused this plat of GULFSHORE to be made and do hereby dedicate to the perpetual use of the public all streets, and/or courts shown hereon IN WITNESS WHEREOF, the owners have hereunto set their hands and seals this 27th day of September, A.D. 1953

WITNESS George E. Adams SEAL
Leah N. Adams SEAL
 WITNESS M. L. Harvey SEAL

ACKNOWLEDGMENT

STATE OF FLORIDA
 COUNTY OF LEE
 I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgments, personally appeared George E. Adams and Leah Adams, husband and wife, and M. L. Harvey, a single woman, to me known to be the persons described in and who executed the foregoing dedication and they acknowledged before me that they executed the same for the purposes and uses therein mentioned
 WITNESS my hand and official seal at Fort Myers, said County and State this 27th day of September A.D. 1953

Arthur R. Snodden Jr.
 Notary Public, State of Florida at Large
 My Commission expires 7-29-55 1955

APPROVALS

This plat accepted this 17th day of October, A.D. 1953 in open meeting of the Board of County Commissioners of Lee County, Florida

Approved: W. E. Kern Chairman
D. J. Zarabee Clerk

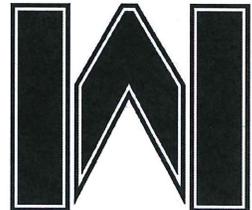
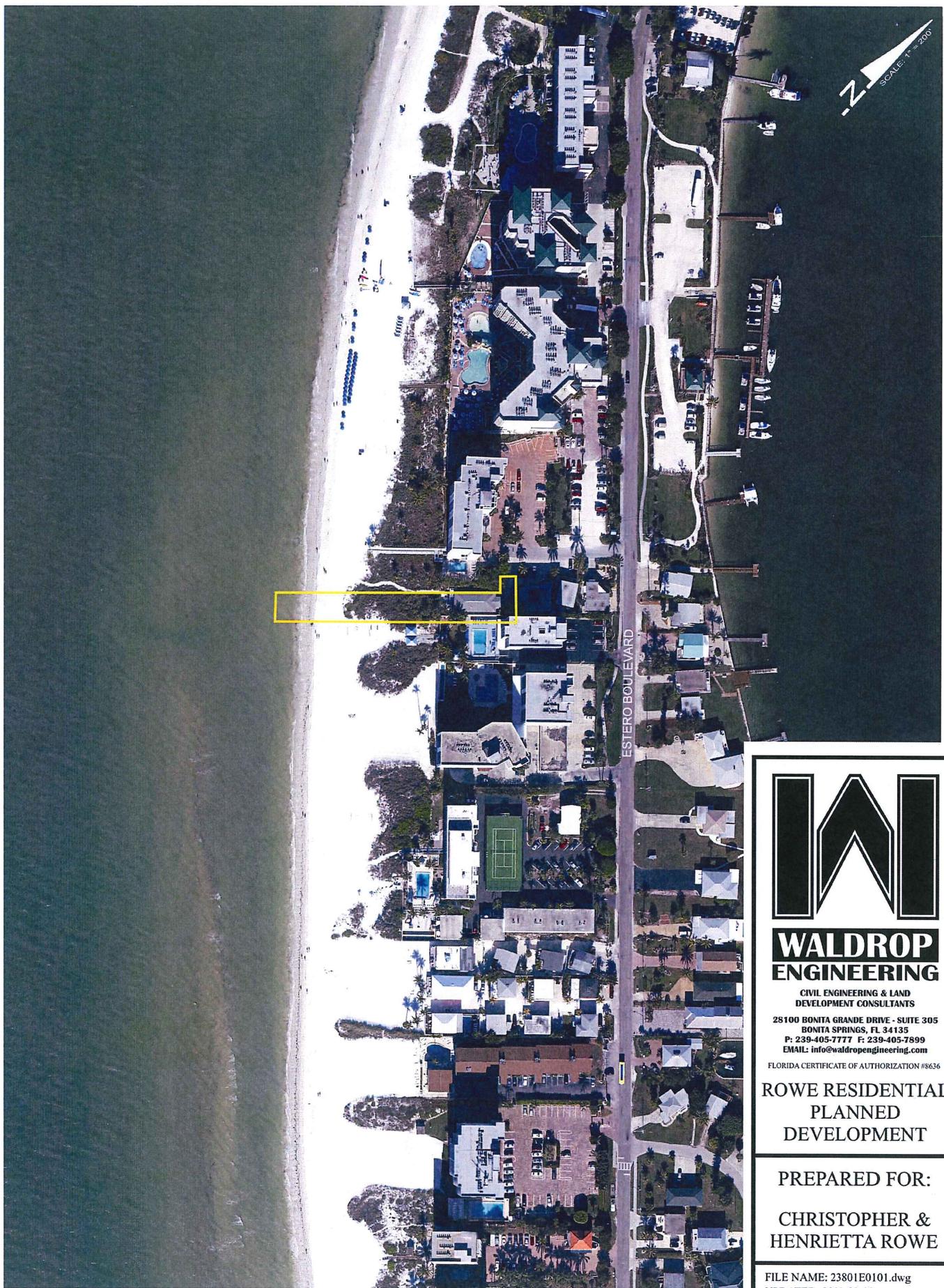
147922

I hereby certify that this plat of GULFSHORE is true and correct according to a recent survey made and plotted under my direction and that permanent reference monument (P.R.M.'s) have been set in accordance with the provisions of Section 7, Chapter 10275, Laws of Florida, Acts of 1925.

Carl G. Johnson
 Reg. Land Surveyor, Fla. Cert. No. 351
 Ft. Myers, Fla.

I HEREBY CERTIFY that this plat of GULFSHORE has been examined by me and from my examination I find that said plat complies in form with the requirements of Chapter 10275, Laws of Florida, Acts of 1925.
 I FURTHER CERTIFY that said plat was filed for record at 3 P.M. this 8th day of October, A.D. 1953 and was duly recorded in Plat Book 9 on Page 88 of the public records of Lee County, Florida.

D. J. Zarabee
 Clerk of the Circuit Court in and for Lee County



**WALDROP
ENGINEERING**

CIVIL ENGINEERING & LAND
DEVELOPMENT CONSULTANTS
25100 BONITA GRANDE DRIVE - SUITE 305
BONITA SPRINGS, FL 34135
P: 239-405-7777 F: 239-405-7899
EMAIL: info@waldropengineering.com
FLORIDA CERTIFICATE OF AUTHORIZATION #8636

**ROWE RESIDENTIAL
PLANNED
DEVELOPMENT**

PREPARED FOR:

**CHRISTOPHER &
HENRIETTA ROWE**

FILE NAME: 23801E0101.dwg
UPDATED: 2011-02-22

Rowe Residential Planned Deveopment

Exhibit D-1-C: Comprehensive Plan Compliance Narrative

Christopher and Henrietta Rowe (Applicant) are requesting approval of a Residential Planned Development (RPD) rezoning to allow for the Pre-disaster Redevelopment of the subject property with a 3-unit condominium and residential accessory uses. The subject property consists of approximately 18,831 s.f. (to ECL), of which 6,500+/- s.f. is located within the Mixed Residential Future Land Use Category. The remainder of the property is seaward of the 1978 Coastal Construction Control Line (CCCL) and is designated within the Recreation Future Land Use Category.

Flanked on both sides by mid-rise and high-rise multi-family residential developments, the subject property currently contains one structure previously used for a multi-family triplex and presently being used as a single family rental. This proposed RPD is essentially an infill redevelopment proposal to make the existing inconsistent single-family use more compatible with the neighboring parcels and to enhance the quality of the area through redevelopment of an old structure. It is proposed for Pre-disaster Redevelopment as a 3-unit condominium under the Pre-disaster Buildback provisions of the Comprehensive Plan [Policy 4-E-1] and Land Development Code (LDC) [Section 34-3237(4)]. The property was historically developed with a triplex as evidenced by the 1978 Property Appraiser Card attached as Exhibit D-2-4. In order to cure the existing inconsistent single family use of the property and to make it more compatible with the surrounding multi-family uses, the Applicant is seeking approval to buildback to the pre-existing triplex use, effectively improving the overall appearance of the subject property, while adhering to the current coastal construction and floodplain regulations.

The following is an analysis of how the proposed RPD is consistent with goals, objectives and policies of the Town of Fort Myers Beach Comprehensive Plan (Plan).

Policy 4-B-2: Mixed Residential Future Land Use Category

The Mixed Residential (MR) Future Land Use Category is designated in areas with mixed housing types on smaller lots, newer high-rise buildings, mobile homes and RV parks. This Category is intended to ensure that Fort Myers Beach retains a variety of neighborhoods and housing types.

The proposed RPD is in direct compliance with this policy as the proposed multi-family use is located in a neighborhood characterized by a mixture of condominiums and hotels on the Gulfside and single- family residences on the Bayside. Therefore, the request for multi-family uses will uphold the desire for a diversity of housing types within the Town.

The proposed density for the property is 3 dwelling units, which complies with the historical density of the property when developed as a 3-unit triplex. The proposed density for the property will fall within the provisions of the pre-disaster buildback policy, 4-E-1 below, and is lower than the existing density of the surrounding properties which are developed at 18 du/acre (Pink Shell Resort PUD to the west and north) and approximately 40 du/acre (Pink Shell Beach Club Condominium Timeshares to the east).

Policy 4-B-8: Recreation Future Land Use Category

A portion of the Applicant's property is located seaward of the CCCL and is designated as Recreation on the Future Land Use Map. Per the attached MCP, this area is not proposed for residential uses and will remain undeveloped in compliance with this policy.

Policy 4-E-1: Pre-Disaster Buildback

This policy allows owners of developments exceeding the current density or height limits to replace the same use prior to a natural disaster via the planned development rezoning process.

Per the attached 1978 property appraiser card and as discussed in the pre-application meetings by the owners with former Planning Director Frank Shockey in 2010, and again recently on February 16, 2011, it has been determined that there is adequate data to support the redevelopment of the subject property with a 3-unit condominium under the pre-disaster buildback provision. The Applicant is proposing to buildback to the same density as previously existed when the property was a triplex, as demonstrated on the MCP.

In terms of height, the Applicant is seeking a deviation from the RM Zoning District's site development regulations to allow for a maximum height of 35 feet above base flood elevation with a total of four (4) stories, including first floor parking. Although more compatible with the surrounding buildings, this proposed height will still be lower than surrounding building heights and will not impact existing views of the Gulf of Mexico from adjacent properties. Specifically, Estero Beach Villas to the west is developed at 8 stories/65 feet above base flood elevation, and the Pink Shell Beach Club is 6 stories/46 feet above base flood elevation.

The Applicant is also requesting a deviation from the pre-disaster buildback regulations in Section 34-3237(4) of the LDC to allow for additional square footage that will allow the redeveloped structure to be more compatible with the neighboring development and buildings with which it must fit in and complement.

The proposed RPD meets the underlying intent of the pre-disaster buildback by ensuring compliance with the current coastal construction and floodplain regulations, which will result in a safer, more storm-resistant structure, thereby providing for greater safety of the surrounding structures in the event of a storm or other disaster. Additionally, the RPD will provide for the visual enhancement of the subject property, which enhances property values and benefits surrounding property owners and their viewsheds along Gulfshore Court and Estero Boulevard.

Policy 4-E-2: Coastal Setbacks

The proposed RPD is in compliance with the coastal setbacks policy, as all proposed structures will be located landward of the CCCL.

Rowe Residential Planned Deveopment

Exhibit D-1-E: Design Standards & Decision-Making Compliance Narrative

Christopher and Henrietta Rowe are requesting approval of an application to rezone the landward 6,500+/- s.f. of a 18,831 s.f. property from Residential Multifamily (RM) to Residential Planned Development (RPD). The rezoning will allow for the redevelopment of the subject property with a 3-unit condominium and residential accessory uses under the Pre-disaster Buildback provisions of the Land Development Code (LDC)[Section 34-3237(4)] and Comprehensive Plan [Policy 4-E-1]. The maximum height requested is 35 feet/4 stories above base flood elevation, including first story parking. The proposed development will connect to Town of Fort Myers Beach potable water and sanitary sewer facilities. No blasting is proposed.

The Applicant's property comprises approximately 18,831 s.f. per the survey prepared by Bean, Whitaker, Lutz and Kareh, of which 6,500+/- s.f. is landward of the Coastal Construction Control Line (CCCL) and is the subject of this rezoning request. This portion of the property is within the Residential Multifamily (RM) Zoning District and is designated within the Mixed Residential (MR) Future Land Use Category. The remaining square footage seaward of the CCCL is zoned Environmentally Critical (EC) and is located within the Recreation Future Land Use Category.

Flanked on both sides by mid-rise and high-rise multi-family residential developments, the subject property currently contains one structure previously used for a multi-family triplex and presently being used as a single family rental residence. This proposed RPD is essentially an infill redevelopment proposal to make the existing inconsistent single-family use more compatible with the neighboring parcels and to enhance the quality of the area. It is proposed for Pre-disaster Redevelopment as a 3-unit condominium under the Pre-disaster Buildback provisions of the Comprehensive Plan [Policy 4-E-1] and Land Development Code (LDC) [Section 34-3237(4)]. The property was historically developed with a triplex as evidenced by the 1978 Property Appraiser Card attached as Exhibit D-2-4. In order to cure the existing inconsistent single family use of the property and to make it more compatible with the surrounding multi-family uses, the Applicant is seeking approval to buildback to the pre-existing triplex use, effectively improving the overall appearance of the subject property, and adhering to the current coastal construction and floodplain regulations. Approval of this rezoning will result in enhanced public health, safety and welfare, as well as an improvement to the built environment along Gulfshore Court and Estero Boulevard.

I. Development Location

The subject property is located at 324 Estero Boulevard on the northern end of Fort Myers Beach. The property is approximately ¾ miles northwest of the San Carlos Boulevard/Estero Boulevard intersection. Access to the property is via Gulfshore Court, a platted, public roadway.

The subject property is located in close proximity to existing Commercial Planned Developments, as well as conventionally zoned resort condominium uses. Please refer to Table 1 below, which describes the adjacent Future Land Use Categories, Zoning Districts, and existing land uses.

Table 1: Inventory of Surrounding Lands

DIRECTION	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USE
North	Mixed Residential	Commercial Planned Development (CPD)	Employee Housing units (Pink Shell Employee Housing)
South	Recreation	Environmentally Critical (EC)	Beach
East	Mixed Residential	Residential Multifamily (RM)	Resort Timeshare Condominium (6-story Pink Shell Beach Club)
West	Mixed Residential	Commercial Planned Development (CPD)	Resort Condominium (8-story Estero Island Beach Villas)

II. Proposed Uses

The proposed infill redevelopment is depicted on the attached Master Concept Plan (MCP) and demonstrates a three-unit condominium with accessory residential structures. A complete listing of the proposed uses is outlined on the attached Schedule of Uses, Exhibit D-2-3. Five (5) parking spaces are proposed under the building in compliance with Section 34-2020 of the LDC. Access is proposed via the existing driveway onto Gulfshore Court.

The Applicant is seeking deviations for increased building height/number of habitable stories and an increase in the square footage of the pre-existing triplex. Further details and justifications for these deviations are as outlined in Exhibit D-1-F attached.

In accordance with Section 34-3273(3)(b) of the LDC, proposed side yard setbacks are 5 ft., as the property was platted at its current dimensions in 1953 and qualifies as a legal, non-conforming lot.

Per Chapter 10-416 of the LDC, perimeter buffers are not required. Parking and trash bin storage will be provided under building and therefore will not require additional screening.

III. Decision-Making Compliance

Per Section 34-85 of the LDC, the requested RPD complies with the following considerations for rezoning approval:

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

The area surrounding the subject property has changed in past years, specifically through the development of mid-rise and high-rise resort condominiums to the east and west. With timeshare uses on both sides of the subject property that range in height from 6 to 8 stories, the proposed 4-story condominium will be more compatible with adjacent developments than the existing single-family use. Additionally, the proposed density will be compatible with surrounding developments and represents infill redevelopment to the historically approved number of units as demonstrated on the attached Lee County Property Appraiser's data.

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

The proposed rezoning will implement the Town's Pre-disaster Buildback policy and allow for the appropriate infill redevelopment of the subject property. The proposed change will result in improved viewsheds from Gulfshore Court, Estero Boulevard, and surrounding properties, as well as compliance with present day floodplain and coastal construction regulations. Deviations are requested as part of the RPD process to implement the pre-disaster buildback redevelopment program. The proposed change is consistent with and furthers the intent of Chapter 34.

3. 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.

Per Exhibit D-1-C attached, the proposed RPD is consistent with the Comprehensive Plan, specifically those policies pertaining to the Mixed Residential Future Land Use Category and Pre-Disaster Buildback. The Applicant is seeking development of a 3-unit condominium, which is consistent with and furthers the intent of the underlying Future Land Use Category. Additionally, the Applicant is seeking redevelopment of the same density that previously existed on the property. Please refer to the attached narrative in Exhibit D-1-C for further explanation of the rezoning's consistency with the Comprehensive Plan.

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

The proposed uses are residential in nature and do not have performance or locational standards as applicable to commercial or industrial uses. The proposed RPD is located in an area with appropriate levels of public infrastructure to support the development of a 3-unit condominium. Furthermore, Estero Boulevard on this west end of the island from Bowditch Park to Times Square has recently undergone a substantial improvement and widening to include sidewalks, new paving, and improvements to drainage and utilities infrastructure, which supports the residential uses of this neighborhood.

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

In compliance with the LDC, Environmentally Critical (EC) Zoning District lands are not included in the RPD request, will remain undeveloped and will not be impacted by the proposed rezoning as demonstrated on the attached MCP. Additionally, in cooperation with the Town the Applicant has already entered into an agreement to allow for beach renourishment within their EC-zoned property.

6. 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 RPD rezoning will result in increased compatibility with the surrounding timeshare condominium resorts, while improving the character and quality of the subject property. As indicated above, the property is adjacent to a CPD to the west, which is developed as an 8-story timeshare. Additionally, the 6-story Pink Shell Beach Club Condominium is directly to the east of the property. Adjacent to the north of the property is Employee Housing for Pink Shell employees, which is part of the overall Pink Shell Resort PUD.

Based on the intense nature of the surrounding uses and the minimal increase in height proposed, the RPD as proposed will be compatible with adjacent, existing uses and will change the existing single-family use which is no longer compatible at this location.

Additionally, the existing single family structure is not constructed to the current base flood elevation standards. Therefore, approval of this Pre-Disaster Buildback rezoning will mitigate potential detriment to persons and property in the event of a hurricane or similar natural disaster.

7. 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.

Per the approved waiver for the Traffic Impact Statement (TIS) requirement, it has been determined that the proposed rezoning will not negatively impact the existing transportation infrastructure due to the size of the property and will return to the historic three units of density. The property is currently serviced by Town of Fort Myers Beach potable water and sanitary sewer services. These services are available at the subject property to service the proposed condominium.

Rowe Residential Planned Deveopment

Exhibit D-1-F Schedule of Deviations & Justifications

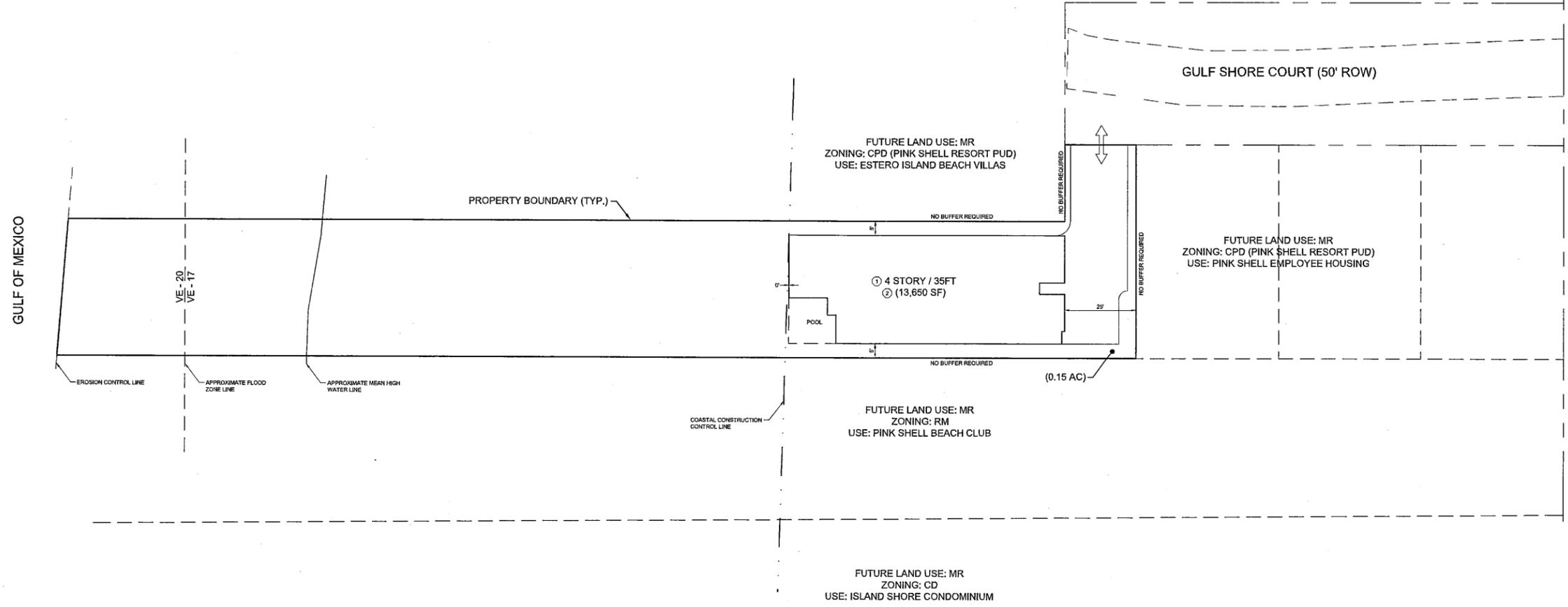
- 1. Deviation from Table 34-3 of the LDC, which allows for a maximum height of 30 feet/3 stories, to allow for maximum height of 35 feet/4 stories.**

Justification: The subject property is adjacent to mid- and high-rise buildings along both the eastern and western property lines. Specifically, Estero Beach Villas to the west is developed at 8 stories/65 feet above base flood elevation, and the Pink Shell Beach Club is 6 stories/46 feet above base flood elevation. Approval of the proposed deviation will allow for increased compatibility with the surrounding buildings and will not impact existing views of the Gulf of Mexico from adjacent properties. Additionally, the proposed development will remain lower than adjacent buildings and will result in an enhanced built environment within the area. Approval of this deviation will not detrimentally impact public health, safety or welfare.

- 2. Deviation from Section 34-3237(4) which requires total interior square footage of a rebuilt dwelling not to exceed the interior square footage of the original dwelling unit, to allow for an increase of interior square footage to permit the proposed 13,650 s.f. condominium.**

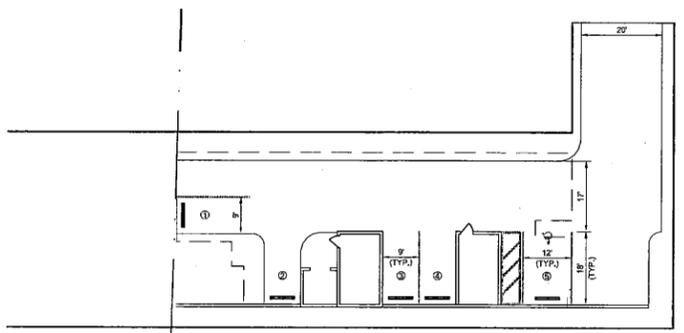
Justification: The proposed RPD meets the underlying intent of the pre-disaster buildback by ensuring compliance with the current coastal construction and floodplain regulations, which will result in a safer, more storm-resistant structure, thereby providing for greater safety of the surrounding structures in the event of a storm or other disaster. Additionally, the RPD will provide for the visual enhancement of the subject property, which enhances property values and benefits surrounding property owners and their viewsheds along Gulfshore Court and Estero Boulevard. As indicated above, the increased height required to achieve the total requested square footage will be compatible with surrounding developments and will not impact views of the Gulf of Mexico from adjacent properties. Therefore, the increased square footage will not result in an impact to public health, safety or welfare, will increase compatibility with surrounding uses, and will allow for an overall enhancement to the area.

DEVIATIONS TABLE	
①	DEVIATION FROM SECTION 94-3 OF THE LDC, WHICH ALLOWS FOR A MAXIMUM HEIGHT OF 30 FEET 8 STORIES, TO ALLOW FOR MAXIMUM HEIGHT OF 35 FEET 8 STORIES.
②	DEVIATION FROM SECTION 94-3(2)(4) WHICH REQUIRES TOTAL INTERIOR SQUARE FOOTAGE OF A RESIDENT DWELLING UNIT TO EXCEED THE INTERIOR SQUARE FOOTAGE OF THE ORIGINAL DWELLING UNIT, TO ALLOW FOR AN INCREASE OF INTERIOR SQUARE FOOTAGE TO PERMIT THE PROPOSED 13,650 S.F. CONDOMINIUM

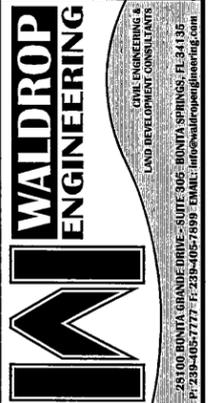


SITE DEVELOPMENT REGULATIONS	
LOT AREA (LANDWARD OF CCCL)	0.15 AC
LOT AREA TOTAL	0.43 AC
LOT WIDTH	48'
SETBACKS	
FRONT	25'
REAR	5'
SIDE	5'
WATERBODY	25'
ACCESSORY	5'
MAXIMUM HEIGHT	35'
F.A.R.	2.3
PARKING SPACES PER UNIT	1.5

- SITE DEVELOPMENT NOTES**
1. FUTURE LAND USE - MIXED RESIDENTIAL (MR)
 2. CURRENT ZONING - RESIDENTIAL MULTI-FAMILY (RM)
 3. PROPOSED ZONING - RESIDENTIAL PLANNED DEVELOPMENT (RPD)
 4. WATER AND SEWER SERVICES TO BE PROVIDED BY THE TOWN OF FORT MYERS BEACH
 5. DRIVEWAY AND PARKING AREA TO BE CONSTRUCTED OF PERVIOUS MATERIAL
 6. ROOF DRAINAGE TO BE DIRECTED AWAY FROM THE BEACH TO SERVICE AREAS ADJACENT TO THE STRUCTURE
 7. NO CONSTRUCTION TO OCCUR BEYOND THE COASTAL CONSTRUCTION CONTROL LINE (CCCL)
 8. SOLID WASTE PICK-UP TO BE PROVIDED BY THE TOWN OF FORT MYERS BEACH
 9. FEMA FLOOD ZONE VE 17 AND 20, ACCORDING TO PLM # 12271/05547, DETAIL 8-28-08
 10. TRASH BIN STORAGE WILL BE PROVIDED UNDER THE BUILDING. LOCATIONS TO BE PROVIDED AT TIME OF D.O.
 11. MAXIMUM UNIT COUNT IS 3 DWELLING UNITS.



PARKING DETAIL
SCALE 1" = 20'

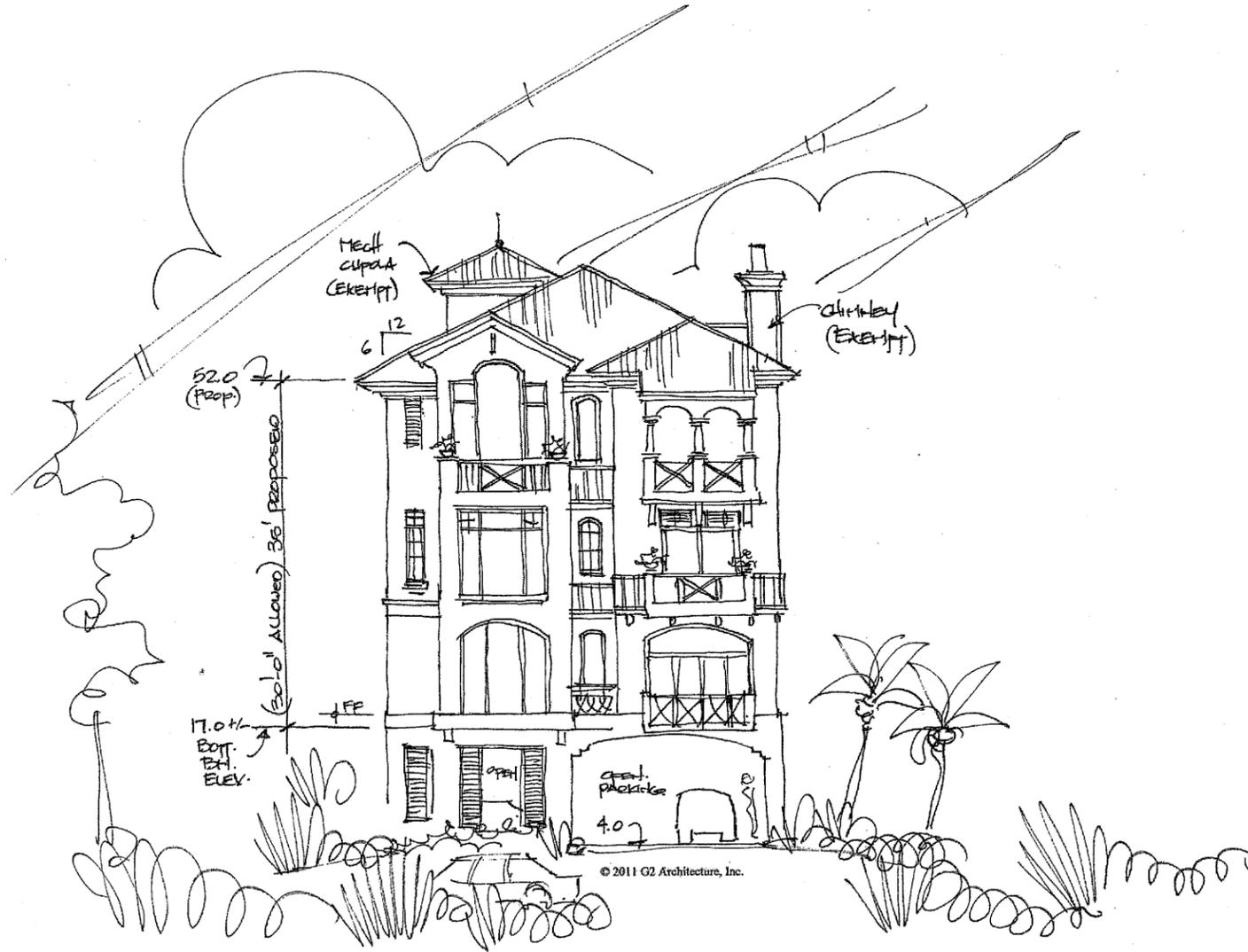


ROWE RESIDENTIAL PLANNED DEVELOPMENT
 CHRISTOPHER & HENRIETTA ROWE
 16256 EDGEMONT DRIVE
 FORT MYERS, FL 33908
MASTER CONCEPT PLAN

PLAN REVISIONS		
NO. 01	DATE	DESCRIPTION

FLORIDA CERTIFICATE OF AUTHORIZATION #662
 STRICKLAND T. SMITH, P.E.
 P.L. LICENSE NO. 5662
 FILE NUMBER: 23801E0201
 SHEET: 1

J:\2380-01 Rowe - FMB\AutoCAD\2380-01-EG02 MCDP\rowe1023801E0201.dwg
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PROPOSED "3-UNIT" BLDG

CONCEPTUAL "FRONT" ELEVATION

324 ESTERO BLVD



Rowe Residential Planned Deveopment

Exhibit D-2-3 Schedule of Uses

REVISED APRIL 18, 2011

Dwelling Units:

Multiple Family Building (limited to 3 dwelling units)

Entrance Gates

Essential Services

Fences, Walls

Recreational Facilities, Private, On-Site

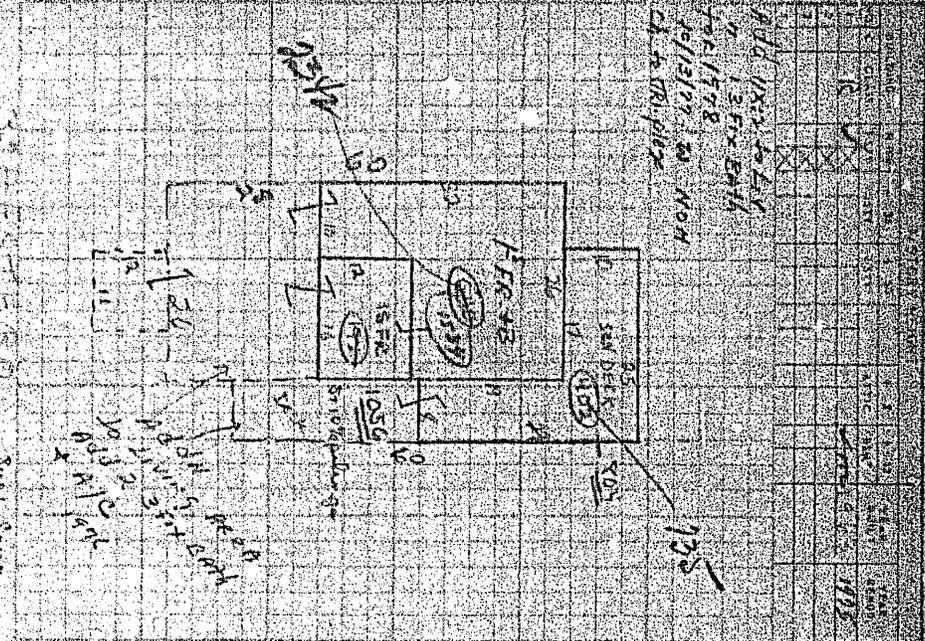
Residential Accessory Uses

Short Term Rental Unit

Storage, Indoor

Temporary Uses

OLD 1932 BLDG
 1355 E. 11th St
 10/13/77 to NOW
 A to DR. PIER



NO.	DESCRIPTION	QTY	UNIT PRICE	VALUE	NO.	DESCRIPTION	QTY	UNIT PRICE	VALUE
1	CONCRETE	1	1000	1000	1	CONCRETE	1	1000	1000
2	STEEL	1	1000	1000	2	STEEL	1	1000	1000
3	BRICK	1	1000	1000	3	BRICK	1	1000	1000
4	ROOFING	1	1000	1000	4	ROOFING	1	1000	1000
5	PAINT	1	1000	1000	5	PAINT	1	1000	1000
6	PLASTER	1	1000	1000	6	PLASTER	1	1000	1000
7	WATER	1	1000	1000	7	WATER	1	1000	1000
8	SEWER	1	1000	1000	8	SEWER	1	1000	1000
9	ELECTRICAL	1	1000	1000	9	ELECTRICAL	1	1000	1000
10	MECHANICAL	1	1000	1000	10	MECHANICAL	1	1000	1000
11	INTERIOR	1	1000	1000	11	INTERIOR	1	1000	1000
12	EXTERIOR	1	1000	1000	12	EXTERIOR	1	1000	1000
13	LANDSCAPE	1	1000	1000	13	LANDSCAPE	1	1000	1000
14	PERMITS	1	1000	1000	14	PERMITS	1	1000	1000
15	INSURANCE	1	1000	1000	15	INSURANCE	1	1000	1000
16	CONTINGENCY	1	1000	1000	16	CONTINGENCY	1	1000	1000
17	TOTAL			17000	17	TOTAL			17000

NO.	DESCRIPTION	QTY	UNIT PRICE	VALUE	NO.	DESCRIPTION	QTY	UNIT PRICE	VALUE
1	CONCRETE	1	1000	1000	1	CONCRETE	1	1000	1000
2	STEEL	1	1000	1000	2	STEEL	1	1000	1000
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4	ROOFING	1	1000	1000	4	ROOFING	1	1000	1000
5	PAINT	1	1000	1000	5	PAINT	1	1000	1000
6	PLASTER	1	1000	1000	6	PLASTER	1	1000	1000
7	WATER	1	1000	1000	7	WATER	1	1000	1000
8	SEWER	1	1000	1000	8	SEWER	1	1000	1000
9	ELECTRICAL	1	1000	1000	9	ELECTRICAL	1	1000	1000
10	MECHANICAL	1	1000	1000	10	MECHANICAL	1	1000	1000
11	INTERIOR	1	1000	1000	11	INTERIOR	1	1000	1000
12	EXTERIOR	1	1000	1000	12	EXTERIOR	1	1000	1000
13	LANDSCAPE	1	1000	1000	13	LANDSCAPE	1	1000	1000
14	PERMITS	1	1000	1000	14	PERMITS	1	1000	1000
15	INSURANCE	1	1000	1000	15	INSURANCE	1	1000	1000
16	CONTINGENCY	1	1000	1000	16	CONTINGENCY	1	1000	1000
17	TOTAL			17000	17	TOTAL			17000