

ORDINANCE 23-10

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 17-39, AND AMENDING THE AREA FOR CONSUMPTION ON PREMISES AND THE MASTER CONCEPT PLAN FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 645 OLD SAN CARLOS BLVD., FORT MYERS BEACH; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Robert Fowler ("Applicant"), authorized agent for Olde Seaport Place Inc. with property generally located at 645 Old San Carlos Boulevard and identified by STRAP numbers 24-46-23-W3-00026.0000, 24-46-23-W3-00026.0030, and 24-46-23-W2-000000.0000 ("Property"), filed an application to replace Town Resolution No. 17-39, and amend the master concept plan to increase the area for consumption of alcohol on premises for the previously approved commercial planned development zoning of the Property; and

WHEREAS, the Property is in the Pedestrian Commercial and Tidal Water categories of the Future Land Use Map of the Comprehensive Plan of the Town; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 09, 2023; and

WHEREAS, at the May 09, 2023, public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) Section 34-85; and

WHEREAS, at the May 09, 2023, public hearing the LPA recommended approval by a 5-0 vote; and

WHEREAS, on June 05, 2023, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by LDC Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised and held before the Town Council on June 20 2023; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by LDC Section 34- 85; and

WHEREAS, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

WHEREAS, the Town Council finds the Application to replace Town Resolution No. 17-39 and amend the area for consumption of alcohol on premises and the master concept plan for the commercial planned development zoning, is consistent with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to approve the Application.

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

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

Section 2. The Town Council determines the Applicant did/did not meet its burden of proof that the request to replace Town Resolution No. 17-39 and amend the area for consumption of alcohol on premises and the master concept plan for the commercial planned development zoning, does/does not meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council APPROVES the Application.

Section 3. Town Resolution 17-39 is repealed and replaced by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, and the amended COP area Master Concept Plan set forth in Exhibit B, and the Existing Overall Master Concept Plan set forth in Exhibit C, and all exhibits attached hereto and incorporated herein by this reference is approved.

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

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

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

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

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member King and seconded by Council Member Woodson, and upon being put to a roll call vote, the result was as follows:

DULY PASSED AND ADOPTED on this 20th day of June 2023.

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

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

John R. Herin, Jr.

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 21st day of June 2023.

EXHIBITS

- Exhibit A** - Schedule of Conditions, Uses and Deviations
- Exhibit B** - Updated Master Concept Plan for COP
- Exhibit C** - Master Concept Plan for overall site

EXHIBIT A - CONDITIONS OF APPROVAL

1. Development must be consistent with the master concept plan (MCP) titled "Olde Seaport of Fort Myers Beach" (Exhibit B) for case DCI 17-0005, last revised 8/3/17, except as modified by conditions or deviations discussed herein. In accordance with LDC Section 34216(b)(S), the MCP must be updated to reflect the deviations and conditions approved by Town Council. If changes to the MCP are subsequently pursued, appropriate approvals will be required.

2. The following limits apply to the project and uses: Schedule of Uses:

Parcel #1 (North Parcel - 645 Old San Carlos Blvd.)

- Consumption on Premises Single-purpose Parking Lot Personal Services Restaurants
- Seating areas

Parcel #2 (Submerged Land Lease)

- Boat slips
- Docks
- Marina & accessory uses
- Seating areas (in connection with adjacent parcels, restaurants and food preparation areas see Exhibit C for restaurant square footages and parking calculations)
- Consumption on Premises

Parcel #3 (South Parcel - 441/445 Old San Carlos Blvd.)

- Single-purpose Parking Lot

Parcel #4 (Butler Act property)

- Seating areas (in connection with adjacent parcels restaurants and food preparation areas)
- Consumption on Premises **(additional COP area of 3,451 square feet added in the latest Master Concept Plan)**

Accessory uses on all parcels:

- Bay access if available Essential services
- Essential services equipment

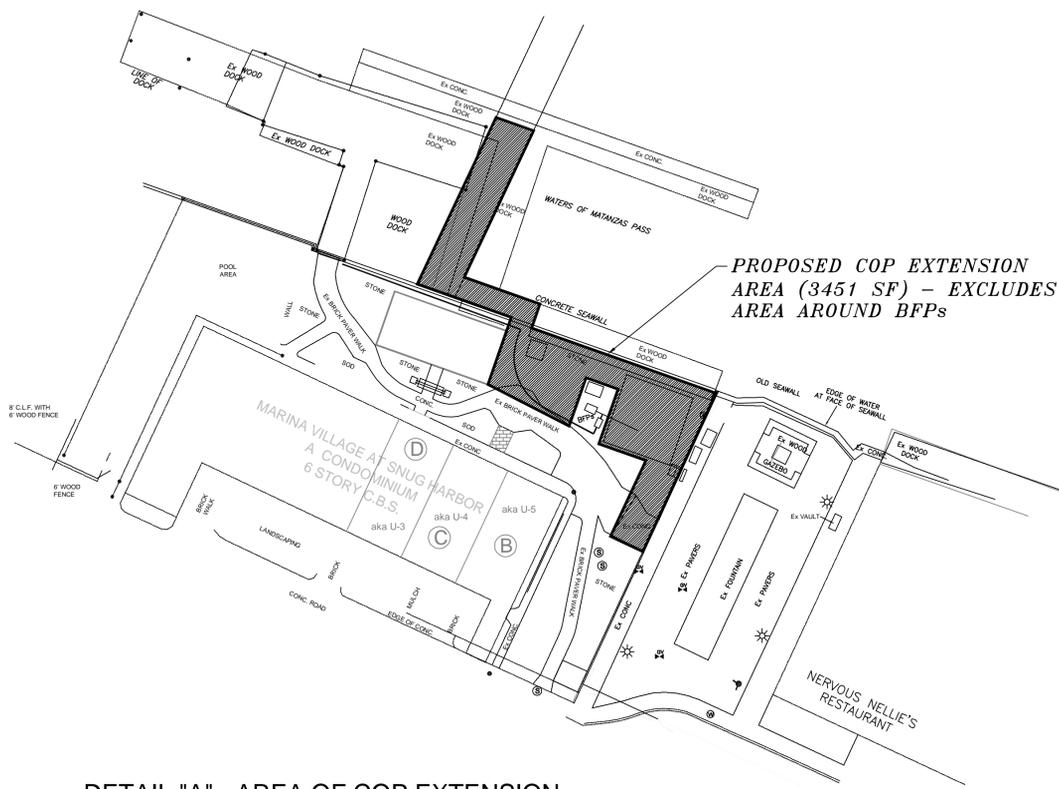
3. Nothing in this rezoning, including any of the attached conditions, may be construed as a variance from the provisions of LDC Chapter 6, Article IV Floodplain regulations.

4. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.

5.

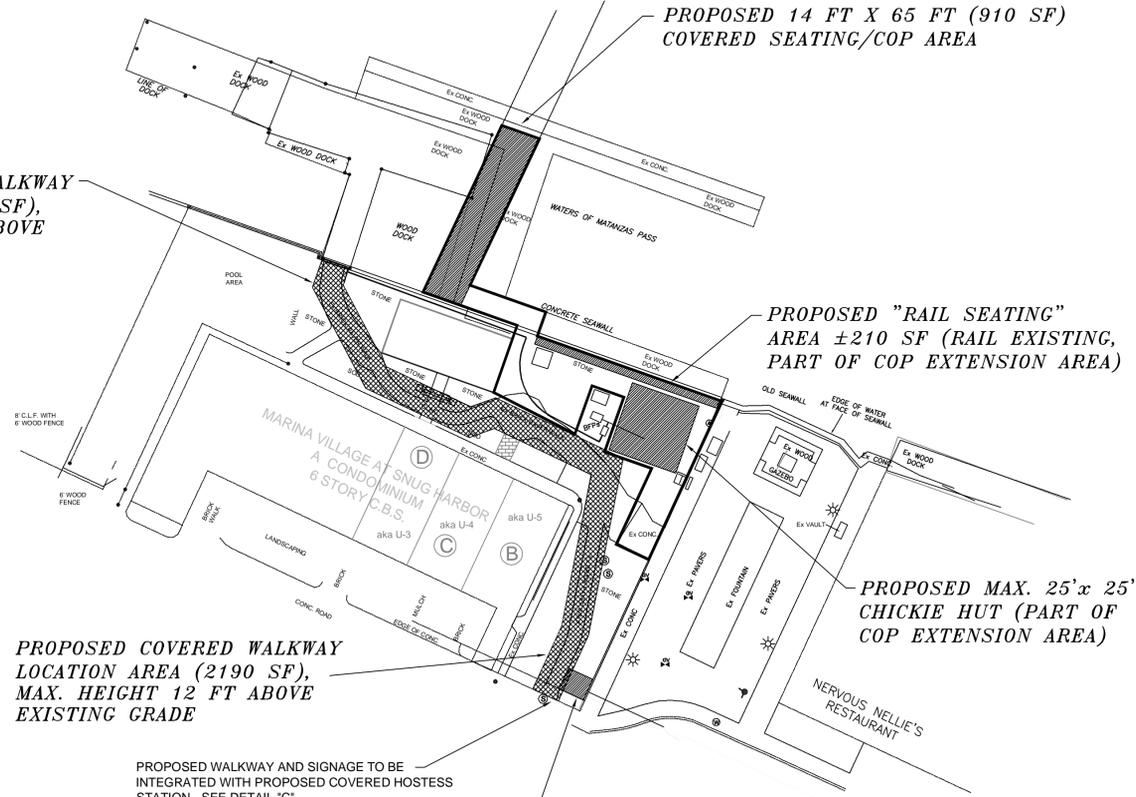
6. The development must comply with LDC Sec. 14-76 requirements for sea turtle conservation applicable to new development.
7. No structure may be placed in or over, and no work may occur in, any navigable water of the United States unless properly authorized by the United States Army Corps of Engineers or its designee.
8. No stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be constructed or altered on the subject property, including submerged lands and riparian leased areas, without property permit or exemption, and unless in compliance with all conditions of such permit or exemption, from the South Florida Water Management District or Florida Department of Environmental Protection, as applicable. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site.
9. Approval of this rezoning does not address the compliance or noncompliance of proposed building elevations with the commercial design standards included in LDC Chapter 34, Article 111, Division 7. Development of the subject property must meet the commercial design standards effective at the time of local development order approval.
10. Docks for use by occupants of principal uses on the subject property, docks for lease to non-occupants of principal uses on the subject property, and docks for use by water taxi or water shuttle are limited to the areas within the existing submerged land leases and submerged land described in Exhibit A. These docks are and must remain accessory to the principal use(s) of the subject property. The number of slips within the area of a submerged land lease may not exceed the number authorized by that lease without proper approval. Construction of additional or replacement docks must comply with all applicable requirements of the LDC and all applicable state and federal regulations at the time of permitting. No live-aboard units are allowed.
11. Hours of operation:
 - All restaurants and outdoor seating areas may operate from 8:00AM to 10:00 PM.
 - Consumption on Premises in conjunction with outdoor seating shall be from 11:30AM-10:00PM. Live entertainment permitted only inside the buildings, limited to non-amplified, acoustical music.
12. Steamers must be located outside of the Marina Village at Snug Harbor Condominium building.
13. No deliveries will be permitted between 9:00PM and 7:00AM.
14. Commercial garbage collection must be provided six days a week (excluding Sundays).

15. Parking lot must be reconfigured to allow vehicular traffic flow without dead-ends.
16. Public restroom facilities must be provided in Unit C of the Marina Village at Snug Harbor Condominium building.
17. Upon the completion of the street side restaurant on parcel #1 (issuance of certificate of occupancy) no beach parking of any kind (Single-purpose Parking Lots only) shall be permitted on the subject properties at any time, all designated parking spaces shall be used for the uses established in this resolution.

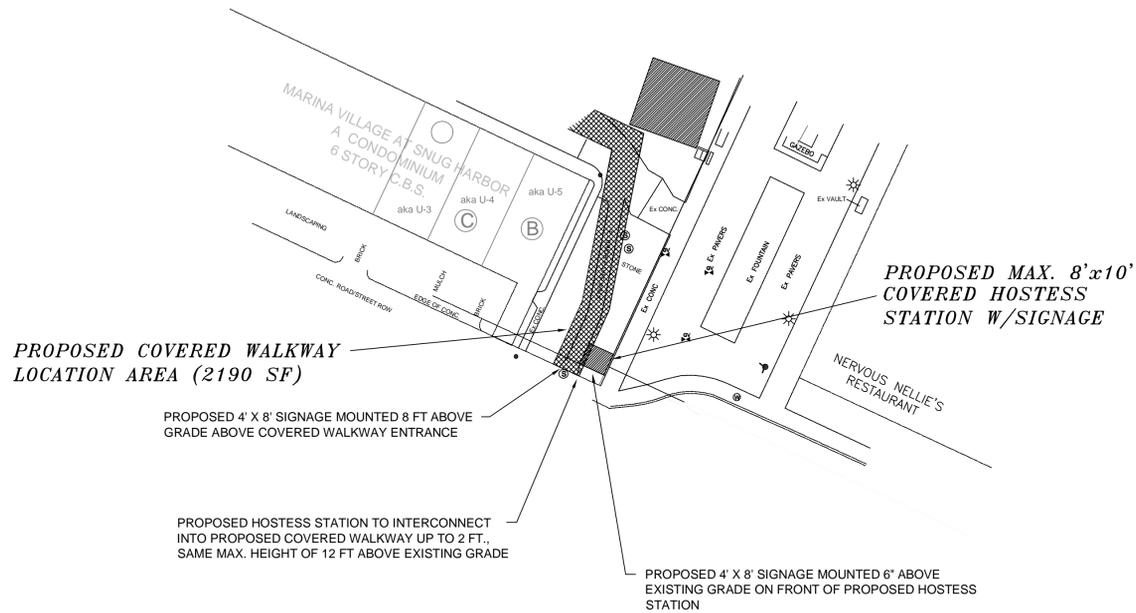


DETAIL "A" - AREA OF COP EXTENSION

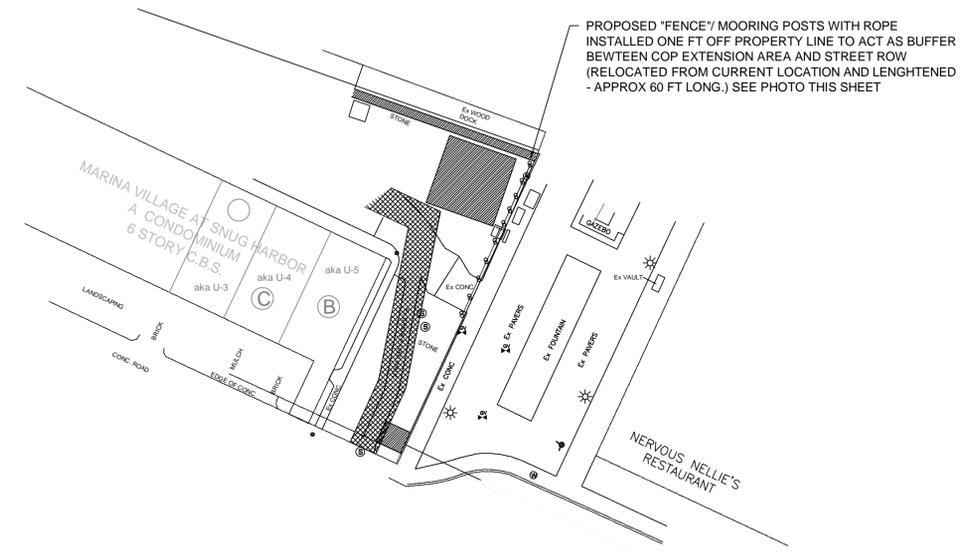
PROPOSED COVERED WALKWAY LOCATION AREA (2190 SF), MAX. HEIGHT 12 FT ABOVE EXISTING GRADE



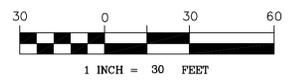
DETAIL "B" - LOCATION OF PROPOSED FACILITIES



DETAIL "C" - HOSTESS STATION/WALKWAY ENTRY SIGNAGE



DETAIL "D" - BUFFERING BETWEEN PROPOSED COP EXTENSION AREA AND STREET ROW



REVISIONS:	DATE

SITE PLAN

OLDE SEAPORT PLACE, INC.
MASTER CONCEPT PLAN DETAILS
 Old Seaport Place, Inc.
 489 Madison Court
 Fort Myers Beach, FL 33931

David E McKee, PE
 Engineering - Permitting - Land Development
 5848 Koylee Ann Drive Granite Falls, NC 28630
 22180 Tallwood Court, #804 Estero, FL 33928
 Phone (239) 898-4008 email: dmckeeeng@gmail.com

DAVID E. MCKEE, PE
 PROFESSIONAL ENGINEER
 P.E. 38347, STATE OF FLORIDA

SCALE: 1" = 20'	CAD FILE: Olde Seaport	DESIGN BY: DEM	DATE: 11/10/2023
		DRAWN BY: DEM	
		CHECKED BY: DEM	
		SHEET: MCP	
		2 of 2	

NOTES:

1. THIS PUBLIC HEARING AMENDMENT TO CPD (RES.15-01) REQUEST INCLUDES THE SAME FOUR PARCELS OF LAND AS THE ORIGINAL REQUEST (WITH CHANGES ONLY BEING MADE TO PARCELS #2 AND #4), AS FOLLOWS:

- STRAP NO. 24-46-23-W3-00026.0000 (645 OLD SAN CARLOS BLVD), ALSO SHOWN AS NORTH PARCEL #1 ON THE ACCOMPANYING SURVEY
- STRAP NO. 24-46-23-W3-00026.0030 (441/445 OLD SAN CARLOS BLVD), ALSO SHOWN AS SOUTH PARCEL #3 ON THE ACCOMPANYING SURVEY
- A NON-STRAPPED PARCEL, KNOWN AS A "BUTLER ACT" PARCEL, ALSO SHOWN AS PARCEL #4 ON THE ACCOMPANYING SURVEY

NO PARCEL #2 IS IDENTIFIED ON THE SURVEY. FOR THE PURPOSE OF THIS AMENDMENT REQUEST, THE SUBMERGED LAND LEASE WILL BE DESIGNATED AS PARCEL #2 (ALSO NOT STRAPPED)

THE RESTAURANT KNOWN AS NERVOUS NELLIE'S LOCATED TO THE EAST, WHILE NOT PART OF THIS CPD, UTILIZES A PORTION OF THE PARKING ON THESE PARCELS AND IS INCLUDED ON THE PARKING CALCULATIONS.

2. CURRENT LAND USE/ZONING:

PARCELS 1 & 3: LAND USE: PEDESTRIAN COMMERCIAL, ZONING: PER CURRENT APPROVAL (RES. 15-01)

PARCELS 2 & 4: LAND USE: TIDAL WATER, ZONING: PER CURRENT APPROVAL (RES. 15-01) (NOTE: PARCEL 4 FORMERLY CONTAINED THE SNUG HARBOR RESTAURANT)

3. DESCRIPTION OF PROPOSED DEVELOPMENT ON EACH PARCEL:

PARCEL #1:
 - COVERED FOOD PREPARATION AREA (LOBSTER POT); 850 SF - SUPPORTED BY KITCHEN OPERATIONS OUT OF UNIT D
 - RESTAURANT W/COP: MAX. 3744 SF (300 SEATS)
 - PARKING; 49 SPACES

PARCEL #2:
 - OPEN SEATING (AWNING PERMITTED) AREA W/COP: 900 SF (75 SEATS)

PARCEL #3: NO CHANGES PROPOSED (REMAINS AS 74 SPACE PARKING LOT)

PARCEL 4:
 - COVERED SEATING W/COP: 1600 SF (125 SEATS)
 - WALKWAY: 390 SF AREA FOR SEATING ACCESS/SERVICE AREA

4. SITE DATA AND DEVELOPMENT REGULATIONS:

PARCEL #1/NORTH PARCEL; TOTAL AREA = 35,768 SF
 - FOOD PREPARATION AREA: 850 SF (MIN. 3 FT SET-BACK, MAX. HEIGHT = 25 FT ABOVE EX. GRADE)
 - RESTAURANT W/COP: 3744 SF (0 FT SET-BACK TO STREET, MAX. HEIGHT = 30 FT ABOVE EX. GRADE)

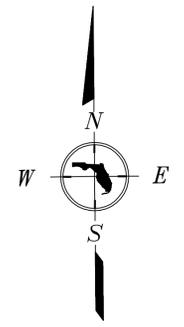
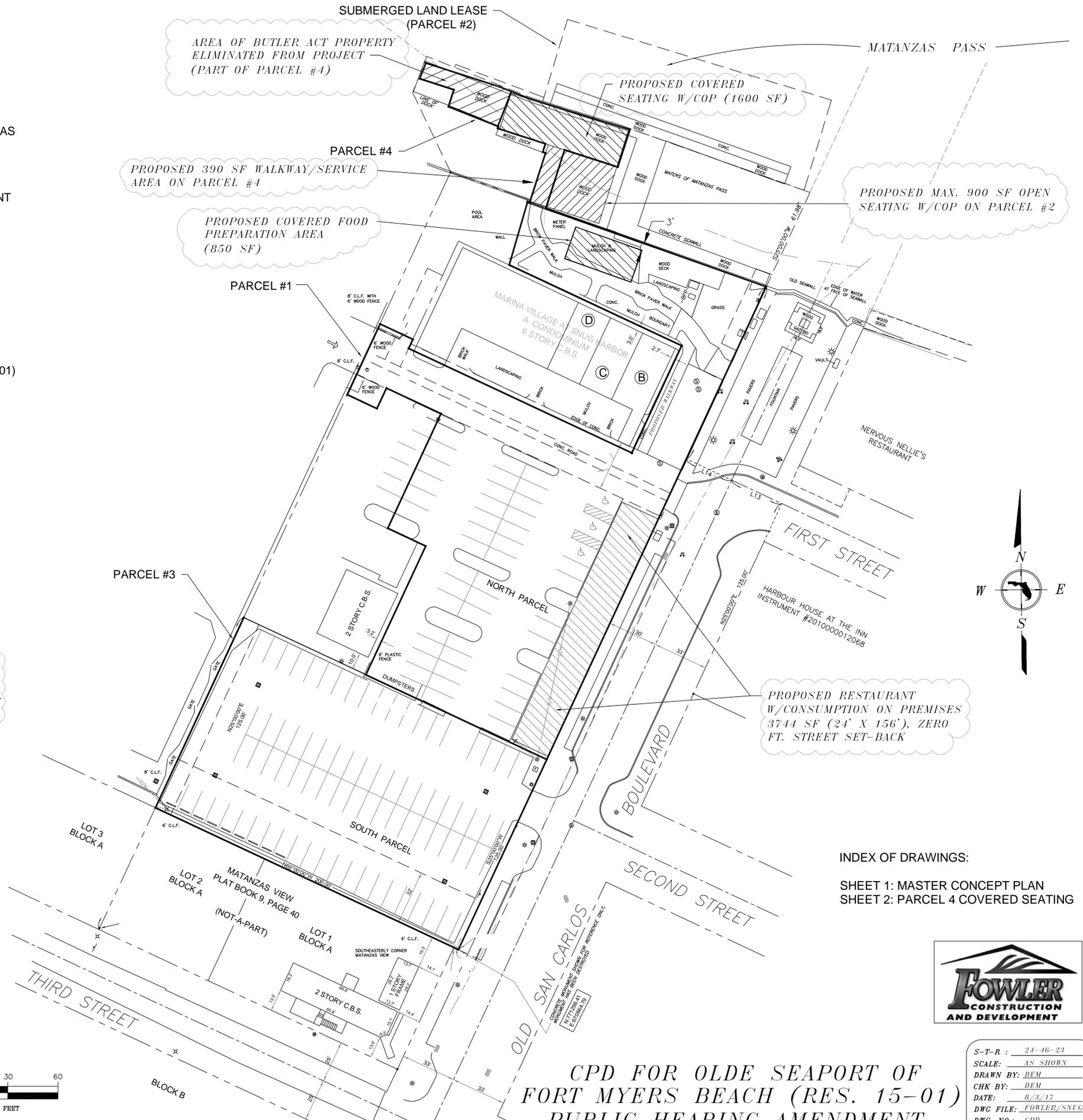
PARCEL #2/SUBMERGED LAND LEASE
 - OPEN SEATING AREA W/COP: 900 SF (0 FT SET-BACK)

PARCEL #3/SOUTH PARCEL; TOTAL AREA = 25,000 SF (NO CHANGES)

PARCEL 4/BUTLER ACT PARCEL; TOTAL AREA = 3025 SF
 - COVERED SEATING AREA W/COP: 1600 SF (0 FT SET-BACK, MAX. HEIGHT = 20 FT ABOVE CURRENT DOCK LEVEL)
 - 390 SF WALKWAY/SERVICE AREA
 - REMAINING AREA REMOVED FROM CPD

5. UNLESS OTHERWISE NOTED, EXISTING DOCKS AND WALKWAYS WILL REMAIN AND CONTINUE TO BE USED IN THE SAME MANNER.

6. UNITS "B", "C" AND "D" IN THE MARINA VILLAGE AT SNUG HARBOR, A CONDOMINIUM, ARE OWNED BY THE APPLICANT BUT NOT PART OF THIS REZONING REQUEST. THE ZONING OF MARINA VILLAGE IS "DOWNTOWN" AND ALL PROPOSED USES ARE CONSISTENT WITH THE CURRENT ZONING.



INDEX OF DRAWINGS:
 SHEET 1: MASTER CONCEPT PLAN
 SHEET 2: PARCEL 4 COVERED SEATING



CPD FOR OLDE SEAPORT OF FORT MYERS BEACH (RES. 15-01) PUBLIC HEARING AMENDMENT

S-T-R :	24-46-23
SCALE :	AS SHOWN
DRAWN BY :	DEM
CHK BY :	DEM
DATE :	8/3/17
DWG FILE :	FOWLER/SNUG
DWG. NO. :	CPD
SHEET :	1 OF 1

REVISIONS:
 12/7/17 - remove parcel 1 (former "full belly dell") outdoor seating per hearing agreement

PROJECT
 MASTER CONCEPT PLAN
 OLD SEAPORT PLACE, INC.
 2532 ESTERO BLVD, UNIT 504
 FORT MYERS BEACH, FL 33931

Mckee Engineering Consultants, Inc.
 Engineering Permitting Land Development
 5235 Starboard Lane Granite Falls, NC 28630
 Phone (239) 898-4008 email: mckeeeng@gmail.com
 FL CERTIFICATE OF AUTHORIZATION #27145

DATE:

DAVID E. MCKEE
 P.E. 38847, STATE OF FLORIDA

Signature: Dan Allers
Mon 21 Jun 23, 2023 16:57 EDT
Email: allersd@fmbgov.com

Signature: Amy Bala
Mon 21 Jun 23, 2023 11:02 EDT
Email: AMY@FMBGOV.COM

Signature: John R. Herbin, Jr.
Mon 21 Jun 23, 2023 13:04 EDT
Email: jherin@foxrothschild.com