

ORDINANCE 24-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, 7-Eleven Inc. and The Neighborhood Company, owner and agents for the property owner, located at 1301 Estero Blvd., parcels generally identified as STRAP numbers 19-46-24-W4-0060B.0160 in the Town of Fort Myers Beach, filed applications to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store ; and

WHEREAS, the subject property is a single parcel located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 9, 2024; and

WHEREAS, at the January 9, 2024 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) sec. 34-85; and

WHEREAS, at the January 9, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the CPD by a 6-0 vote with one member abstaining; and

WHEREAS, on January 22, 2024 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 Fort Myers Beach Land Development Code (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 noticed in an appropriate publication 10 days prior to the Town Council on February 5, 2024; 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 Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

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

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; 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 that this request to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Deviation from LDC Section 34-706(d) which requires properties that front on Estero Blvd and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access from Palermo Circle and Estero Blvd.

Deviation #2

Deviation from LDC Section 34-2013(a)(3) which limits driveway apron width, at the property line, to 25 feet. The request is to allow a 60-foot-wide curb cut at Palermo Circle and a 35-foot-wide curb cut on Estero Blvd.

Deviation #3

Deviation from LDC Section 10-285 the minimum driveway separation requirements along Estero Boulevard and Palermo Circle. The deviation would allow driveway (vehicle access) separation along Estero Boulevard to be a minimum of approximately 141 feet from the adjacent access point to the east and a minimum of approximately 52 feet from the Estero Blvd/Palermo Intersection. The deviation would also allow driveway (vehicle access) separation along Palermo Circle to be a minimum of approximately 52 feet from the Santos Road intersection and approximately 105 feet

from the Estero Blvd/Palermo Circle intersection.

Deviation #4

Deviation from LDC Section 34-706(a) which requires parking to be located in the side or rear of the property. This deviation will allow the parking to be located closer to Palermo Circle than the primary structure.

Deviation #5

Deviation from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet, for a total of 14 spaces for the 3,500 square foot structure. To allow eight parking spaces.

Deviation #6

Deviation from LDC Section 34-705(a)(1) which requires buildings on Estero Blvd. to have at least 50% building frontage. The request would allow a building with at least 43% frontage along Estero Blvd.

Deviation #7

Deviation from LDC Section 34-2015(5) which requires sufficient maneuvering room to allow an exiting vehicle to leave the parking lot in a forward motion. The deviation would allow vehicles to leave the most northern parking spaces in a reverse motion into the Palermo Circle right-of-way.

Deviation #8

Deviation from LDC Section 34-1744(b)(4)d, which requires that for sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 48 inches in height but must not exceed six feet in height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven (7) feet in height.

Findings for the rezoning:

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. The previous development on the subject property was destroyed by Ian and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.

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

WHEREAS, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

1. Deviations #1, #2, #3, #4, #5, #6, #7, #8 are being approved only due to the exceptional circumstances in furtherance of policies in the Comprehensive Plan.
2. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area including building height, traffic flow, and intensity of use.
3. The proposed development, as modified by these deviations, exceeds all standards of the Fort Myers Beach Comprehensive Plan.
4. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
5. Granting these deviations will enhance the achievement of the objectives of the proposed development.
6. The general intent of the LDC, to protect the public health, safety, and welfare, will be preserved and promoted with these deviations.
7. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
8. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to approve Ordinance 24-02 which is, **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve with conditions** the Application.

NOW, THEREFORE, IT IS HEREBY 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 meet its burden of proof that the request to approve Town of Fort Myers Beach's Ordinance no. 24-02 and the conditions of approval for the commercial planned development zoning, **does** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-02 is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, 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 vote, the result was as follows:

DULY PASSED AND ADOPTED on this 5th day of February 2024.

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Vacant, Council Member	N/A
Karen Woodson, Council Member	Aye

FORT MYERS BEACH TOWN COUNCIL


Dan Allers (Feb 9, 2024 16:43 EST)

Dan Allers, Mayor

ATTEST:


Amy Baker (Feb 13, 2024 09:17 EST)

Amy Baker, Town Clerk

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


Nancy Stuparich (Feb 8, 2024 14:02 EST)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8th day of February 2024.

Exhibit A: CONDITIONS OF APPROVAL & SCHEDULE OF USE

Conditions of Approval

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230160 with the attached conditions:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. The parking space closest to Palermo Circle shall include signage which warns drivers that they are backing into a right of way and to be aware of oncoming traffic.
4. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

Schedule of Use

Convenience store without gas pumps



MASTER CONCEPT PLAN FOR 1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (7- ELEVEN STORE #7043)

LOCATED IN LEE COUNTY, FLORIDA

PART OF SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST

DEVELOPED BY

PROPERTY OWNER

7-ELEVEN INC
C/O CORP INCOME TAX DEPT
3200 HYACKBERRY RD
IRVING TX 75063

DEVELOPED BY

CREIGHTON CONSTRUCTION & MANAGEMENT
2240 W FIRST ST, SUITE 101
FORT MYERS, FLORIDA 33901

PROPERTY INFORMATION

SITE ADDRESS

1301 ESTERO BLVD
FORT MYERS BEACH FL 33931

FOLIO NUMBER

10228074

FLOOD ZONE

ACCORDING TO THE FLOOD INSURANCE RATE
MAP NO. 12071C0554G,
EFFECTIVE DATE: NOVEMBER 17, 2022,
THE PROPERTY IS LOCATED IN FLOOD ZONES
"AE-11" AND "AE-12"

CURRENT ZONING

DOWNTOWN
DISTRICT



VICINITY MAP

N.T.S.



LOCATION MAP

N.T.S.

INDEX OF SHEETS

- COVER SHEET
- MASTER CONCEPT PLAN

#	DATE	REVISIONS

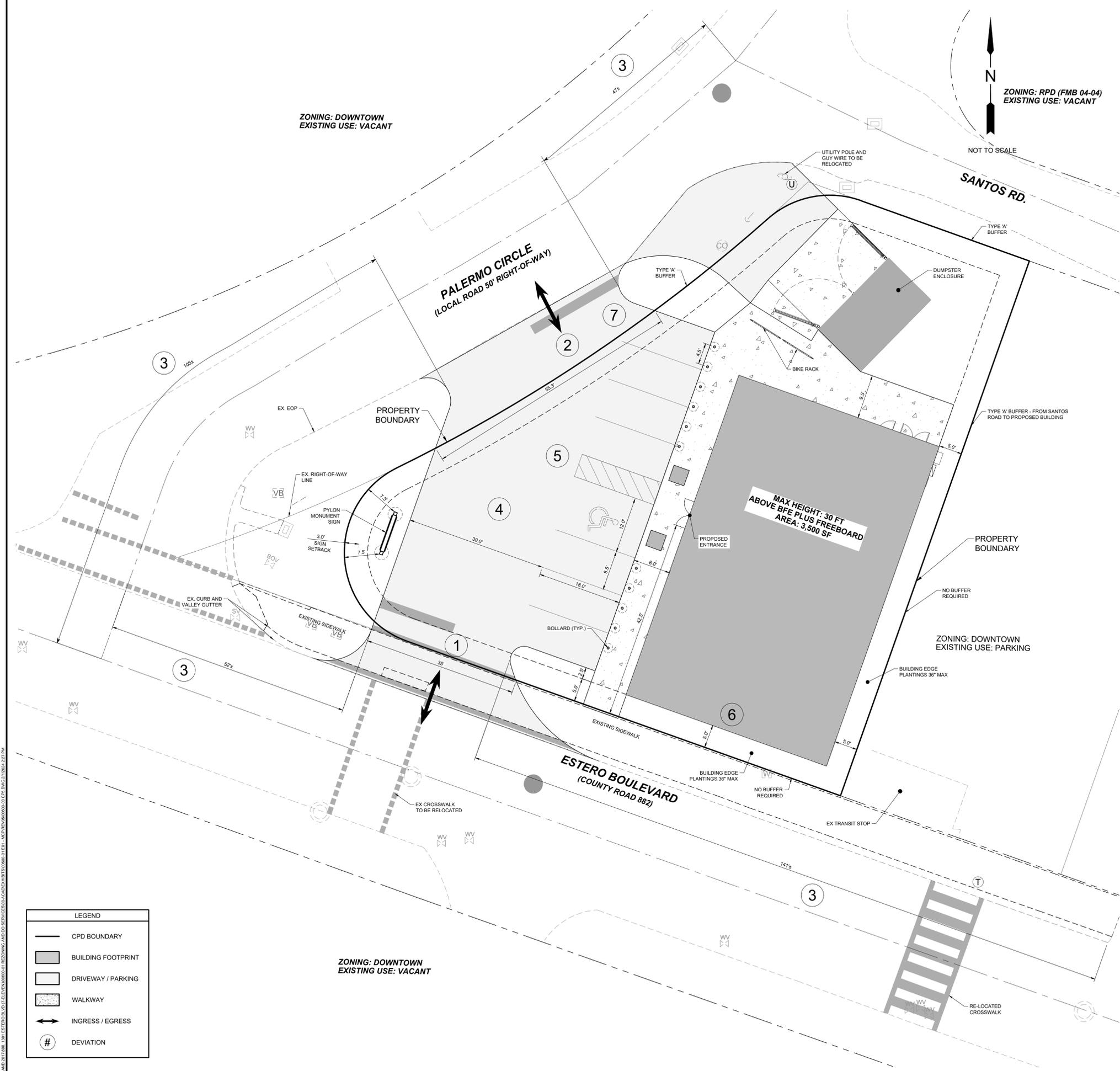
DATUM NOTE:

ALL ELEVATIONS REFERENCE NAVD88 VERTICAL DATUM.
APPROXIMATE CONVERSION FOR PROJECT AREA: NAVD88 + 1.18' = NGVD29
ANY DATUM CONVERSIONS SHOULD BE CONFIRMED BY A LICENSED SURVEYOR PRIOR TO USE.

ALVARO J. YUSTY, P.E.
FL. LICENSE NO. 92973
FL. COA # 28228

PROJECT #: 00600-00

SHEET: 1



DEVELOPMENT STANDARDS TABLE	
BUILDING TO LINE	REQUIRED
PRIMARY STREET (ESTERO BLVD)	0-5 FT
BUILDING FRONTAGE	ALL STREETS
MINIMUM SETBACKS - PRIMARY AND ACCESSORY STRUCTURES	MINIMUM 43% OF LOT FRONTAGE
SECONDARY STREET (PALERMO CIR)	20 FT
OTHER STREET (SANTOS)	7.5 FT
SIDE/REAR	5 FT
MINIMUM LOT DIMENSIONS	
LOT WIDTH	70 FT
LOT DEPTH	100 FT
LOT AREA	0.245 AC
MAXIMUM INTENSITY - FLOOR AREA RATIO (FAR)	
MAX FAR	0.33
MAX INTENSITY	3,500 SF
MAX BUILDING HEIGHT	30 FT ABOVE BASE FLOOD ELEVATION PLUS FREEBOARD

OPEN SPACE		
MINIMUM PERCENTAGE	REQUIRED	PROVIDED
	0	20.82%
MINIMUM AREA	0 AC	0.051 AC

- GENERAL NOTES:**
1. THE BUILDING SHALL BE A MAXIMUM OF 3,500 +/- SQUARE FEET.
 2. PROJECT WILL BE DEVELOPED IN ONE PHASE.
 3. WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT THE TIME OF D.O.
 4. THE EXACT BUILDING AND SITE IMPROVEMENT CONFIGURATIONS ARE PRELIMINARY IN NATURE AND SUBJECT TO CHANGE. THE FINAL DESIGN AND IMPROVEMENT DETAILS SHALL BE DEFINED AS PART OF THE DEVELOPMENT ORDER (DO) PROCESS.
 5. ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 34 OR OTHER APPLICABLE PROVISIONS OF THE LDC.
 6. NO ENVIRONMENTALLY SENSITIVE LAND OR WATER EXISTS ON SITE AS SITE WAS IMPACTED BY PREVIOUS DEVELOPMENT. NO PROTECTED SPECIES SURVEY IS REQUIRED AS PROPERTY IS LESS THAN ONE (1) ACRE PER LDC SEC. 10-473.
 7. ANY PROPOSED STRUCTURE LOCATED IN A SPECIAL FLOOD HAZARD AREA (SFHA) WITH COMMERCIAL SPACE BELOW THE BASE FLOOD ELEVATION (AT GROUND LEVEL) WILL BE PROPERLY DRY-FLOODPROOFED IN ACCORDANCE WITH LDC ARTICLE IV, FLOODPLAN REGULATIONS AND LDC SECTION 34-631(C). THE DRY-FLOODPROOFING SHALL INCLUDE FASTENING DESIGNED TO BE 'VISUALLY UNOBTUSIVE' AND INTERGRATED INTO THE DESIGN OF THE PRINCIPAL FACADES.

- SCHEDULE OF USES:**
- COMMERCIAL
1. RETAIL STORE, SMALL TO INCLUDE: CONVENIENCE STORES, NO FUEL PUMPS (OPEN 24 HOURS / 7 DAYS)
- PARKING:**
1. 8 VEHICLE PARKING SPACES FOR CONVENIENCE FOOD AND BEVERAGE STORES.
 2. 8 BICYCLE PARKING SPACES.

- DEVIATIONS:**
1. SEEKS RELIEF FROM LDC SECTION 34-706(D), WHICH REQUIRES THAT WHEN PROPERTIES FRONTING ON ESTERO BOULEVARD, EXISTING DRIVEWAY AND PARKING SPACES SHALL BE RELOCATED FROM ESTERO BOULEVARD TO SECONDARY STREETS, EXCEPT WHERE THESE REQUIREMENTS WOULD PROHIBIT ALL REASONABLE ACCESS TO A PROPERTY. THE DEVIATION WOULD ALLOW DRIVEWAYS TO REMAIN THAT CONNECT TO ESTERO BOULEVARD AND PALERMO CIRCLE.
 2. SEEKS RELIEF FROM SECTION 34-2013 (A)(3) WHICH STATES THAT THE MAXIMUM WIDTH AT THE PROPERTY FOR PARKING LOT ACCESS IS 25 FEET. THE DEVIATION WOULD ALLOW FOR A MAXIMUM PARKING LOT ACCESS WIDTH AT THE PROPERTY LINE OF APPROXIMATELY 55 FEET ALONG PALERMO CIRCLE AND 35 FEET ALONG ESTERO BLVD.
 3. SEEKS RELIEF FROM THE DRIVEWAY SEPARATION REQUIREMENTS OF LDC SECTION 10-285 ALONG PALERMO CIRCLE. THE DEVIATION WOULD ALLOW DRIVEWAY (VEHICLE ACCESS) SEPARATION ALONG ESTERO BOULEVARD TO BE APPROXIMATELY 141 FEET FROM THE ADJACENT ACCESS POINT TO THE EAST AND APPROXIMATELY 52 FEET FROM THE ESTERO BLVD/PALERMO INTERSECTION. THE DEVIATION WOULD ALSO ALLOW DRIVEWAY (VEHICLE) SEPARATION ALONG PALERMO CIRCLE TO BE APPROXIMATELY 47 FEET FROM THE SANTOS ROAD INTERSECTION AND APPROXIMATELY 105 FEET FROM THE ESTERO BLVD/PALERMO CIRCLE INTERSECTION.
 4. SEEKS RELIEF FROM LDC SECTION 34-706(A) WHICH REQUIRES OFF-STREET PARKING LOT TO BE PLACED IN THE SIDE OR REAR YARDS. THE DEVIATION WOULD ALLOW THE OFF-STREET PARKING TO BE LOCATED AND ORIENTATED TOWARD THE PALERMO CIRCLE FRONTAGE.
 5. SEEKS RELIEF FROM LDC SECTION 34-2020(D)(2), 1 WHICH REQUIRES A MINIMUM OF FOUR SPACES PER 1,000 SQUARE FEET OF TOTAL FLOOR AREA OR 14 PARKING SPACES FOR THE PROPOSED MAX. 3,500 SQUARE FEET OF CONVENIENCE STORE TOTAL FLOOR AREA. THE DEVIATION WOULD ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED PARKING SPACES TO 8 PARKING SPACES.
 6. SEEKS RELIEF FROM LDC SECTION 34-705(A)(1) WHICH REQUIRES BUILDING FRONTAGES ON ESTERO BOULEVARD TO BE AT LEAST 50 PERCENT OF THE LOT FRONTAGE. THE DEVIATION WOULD ALLOW FOR THE BUILDING FRONTAGE ON ESTERO BOULEVARD TO BE AT LEAST 43 PERCENT OF THE LOT FRONTAGE.
 7. SEEKS RELIEF FROM LDC SECTION 34-2015(5) WHICH REQUIRES SUFFICIENT MANEUVERING ROOM TO ALLOW AN EXITING VEHICLE TO LEAVE THE PARKING LOT IN A FORWARD MOTION. THE DEVIATION WOULD ALLOW FOR VEHICLES TO LEAVE THE MOST NORTHERN PARKING SPACES IN A REVERSE MOTION INTO THE PALERMO CIRCLE RIGHT-OF-WAY.
 8. SEEKS RELIEF FROM LDC SECTION 34-1744(B)(4)D, WHICH REQUIRES THAT FOR SITES WHERE THE LOCATION AND CONFIGURATION OF EXISTING STRUCTURES AND VEHICLE USE AREAS PREVENT THE PLACEMENT OF REFUSE CONTAINERS OUTSIDE THE FRONT YARD, FENCES AND/OR WALLS ERRECTED FOR THE SOLE PURPOSE OF PROVIDING REASONABLE SCREENING OF REFUSE CONTAINERS LOCATED IN A FRONT YARD MAY EXCEED 48 INCHES IN HEIGHT, BUT MUST NOT EXCEED SIX FEET IN HEIGHT. THE DEVIATION WOULD ALLOW THE REFUSE CONTAINER SCREENING (ENCLOSURE) TO BE A MAXIMUM OF SEVEN (7) FEET IN HEIGHT.

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LEGEND	
	CPD BOUNDARY
	BUILDING FOOTPRINT
	DRIVEWAY / PARKING
	WALKWAY
	INGRESS / EGRESS
	DEVIATION

ZONING: DOWNTOWN
 EXISTING USE: VACANT

J.R. EVANS ENGINEERING, P.A.
 9961 INTERSTATE COMMERCE DR, STE. 230
 FT. MYERS, FLORIDA 33913
 PHONE: (239) 405-9148
 FAX: (239) 288-2537
 WWW.JREVAENGINEERING.COM

1301 ESTERO BLVD. COMMERCIAL PLANNED DEVELOPMENT
 MASTER CONCEPT PLAN

#	DATE	REVISIONS

BRANDON M. FREY, P.E.
 FL. LICENSE NO. 86651
 FL. COA # 29226

PROJECT #: 00600-00
 SHEET: 2

C:\LAND\301760_1301 ESTERO BLVD (ELEVATION) (REZONING AND DO SERVICES)\301760-01\CPD\301760-01-0201-1-237.dwg