

ORDINANCE 24-20

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING DEVIATIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) 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, TPI-FMB LLC and Morris-Depew, applicants and agents for the property owners, generally located at 1170, 1180/1192, 1204/1206 Estero Boulevard, 251 Crescent St, 1150 Fifth St. and other unaddressed parcels, parcels generally identified as STRAP numbers 24-46-23-W3-00205.0070 (MCP parcel #3), 24-46-23-W3-00006.0000 (MCP parcel #1), 24-46-23-W3-00206.0060 (MCP parcel #1), 24-46-23-W3-00009.0000 (MCP parcels #2 AND #5), 19-46-24-W4-U0494.2609 (MCP parcel #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP parcel #2), 19-46-24-W4-0140B.0070 (MCP parcels #2 AND #5), 19-46-24-W4-U0496.2608 (MCP parcel #2), AND 19-46-24-W4-U0498.2607 (MCP parcels #2 AND #6) in the Town of Fort Myers Beach, filed applications to amend Ordinance 18-04 and amend conditions of approval of the commercial planned development zoning; and

WHEREAS, Ordinance 24-01 amended the existing CPD to remove limitations on development of the beachfront lot on 5.1+/- acres more or less property, located at 1170, 1180/1192, 1204/1206 Estero Boulevard in the Town of Fort Myers Beach; and

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

WHEREAS, with the exception of portions of Town or County right-of-way, the applicant has indicated the subject property is under common control and Tom Torgerson serves as the managing member for each ownership listed in the public records of Lee County Property Appraiser; and

WHEREAS, on September 9, 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 legally advertised and held before the Town Council on October 28, 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, with the following terms, conditions, and requirements which the Town Council 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 is the amended deviations list; and

WHEREAS, Exhibit B is the approved Master Concept Plan including location of the two signs relevant to this amendment; and

WHEREAS, the Town Council finds that this request to amend existing ordinance 24-01 for a CPD, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #5

Deviation seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

Deviation #6

Deviation seeks relief from LDC Section 30-5(a)(1)(b)(3)(iii) which requires freestanding signs in commercial districts not to exceed 5-feet in height above finished grade, to allow for one (1) directional pole sign to be a maximum height of 9-feet above finished grade in the location shown on the MCP.

Deviation #7 & 8

Deviation seeks relief from LDC Section 30-5(a)(1)(b)(3)(iv), which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.

Deviation #9

Deviation seeks relief from LDC Section 30-5(a)(1)(b)(3)(iii) which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.

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 amendment to Commercial Planned Development (see LDC 34-85 and 34-216) ordinance 24-01:

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- 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.
- o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
 - Policy 4-C-4 on building heights taller than the standard height limit
 - Policy 4-C-6 on hotel/motel densities
 - Policy 4-C-8 on density transfers
 - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

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

1. 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.
2. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.
3. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
4. Granting these deviations will enhance the achievement of the objectives of the proposed development.
5. The general intent of the LDC to protect public health, safety, and welfare will be preserved and promoted with these deviations.
6. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
7. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to amend Ordinance 24-01 and amend conditions of approval of the commercial planned development zoning, consistent with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to approve 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 amend Town of Fort Myers Beach's Ordinance no. 24-01 and amend the deviations 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 the requested application.

Section 3. Town Ordinance 24-01 is amended by this Ordinance and the list of approved deviations 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 Vice Mayor Atterholt and seconded by Council Member King, and upon being put to a roll callvote, the result was as follows:

Dan Allers, Mayor	Recused
Jim Atterholt, Vice Mayor	Aye
John R. King	Aye
Scott Safford	Aye
Karen Woodson	Aye

ADOPTED this 28th day of October 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Nov 21, 2024 13:03 EST)

Dan Allers, Town Mayor

ATTEST


Amy Baker (Nov 22, 2024 13:34 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 (Nov 21, 2024 22:41 EST)

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 20th day of November 2024.

Exhibit-A Amended Deviations List

Deviation #1

Deviation from LDC Section 34-1803(a) which establishes equivalency factors for converting allowable dwelling units to hotel rooms. The equivalency remains at three, a total of 254 hotel rooms (224 rooms on Parcel 1 and 30 rooms on Parcel 2) per the revised Master Concept Plan pages dated 5/2018 are authorized due to exceptional circumstances and unique public benefit on record to include view corridor and permanent perpetual transfer of density and development rights from the VE zone to the AE zone.

Deviation #2

Deviation from LDC Section 34-675(b) which limits building heights as follows: 3 stories and 30 feet along Crescent Street and Fifth Street; 3 stories and 40 feet along the south side of Estero Boulevard; to allow the main resort building which fronts on Estero, Crescent and Fifth to be 4 stories and 38 feet, 10 inches feet above average base flood elevation and along the south side of Estero Boulevard of 4 stories, and other buildings to be at the lesser heights as shown on the Master Concept Plan.

Deviation #3

Deviations from LDC Section 34-675(c) which limits floor area ratio (FAR) to 1.4 for properties fronting on Estero Boulevard and to 1.0 for all other properties in the CPD to allow a FAR of 1.55 on Parcel 1 and Parcel 2 and Parcel 3.

Deviation #4

Deviation from the LDC Section 10-416(d)(2) which requires a Type D buffer (15 feet wide with 5 trees and staggered hedges to form a 3-foot visual screen between parking and a right-of-way) - to replace the Type D buffer with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on the Master Concept Plan.

Deviation #5

Deviation seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

Deviation #6

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Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iv, which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.

Deviation #9

Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.

DEVELOPED BY:



OWNER

TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

ARCHITECT

RAMMER & ASSOCIATES, INC.
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PLANNING, CIVIL, SURVEY & LANDSCAPE ARCHITECTURE

MORRIS-DEPEW ASSOCIATES, INC.
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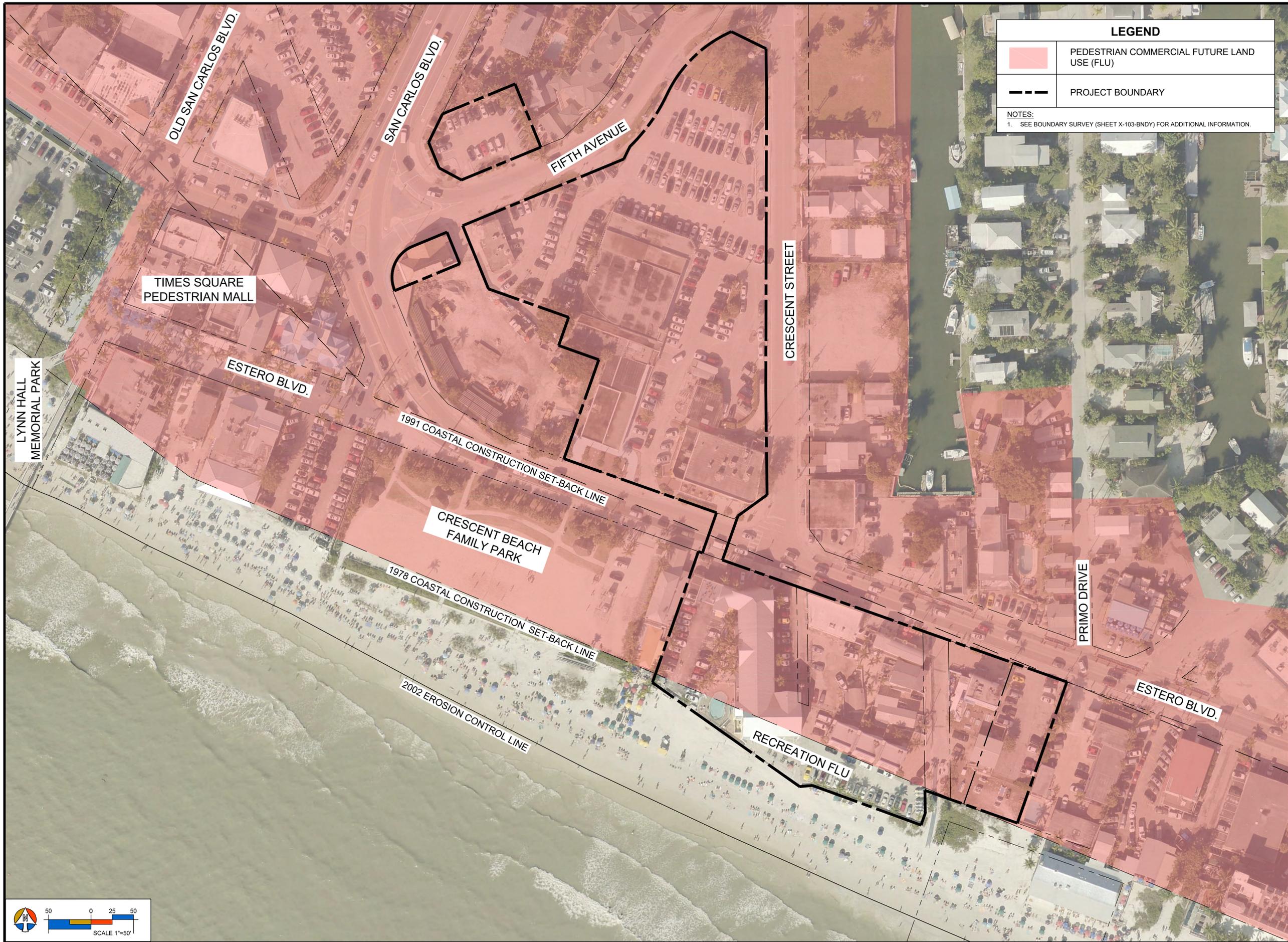
TRANSPORTATION

DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
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Sheet Index	
Sheet Number	Sheet Name
X-G01	COVER SHEET
X-101-FLU	FUTURE LAND USE AND PROJECT BOUNDARY
X-102-BNDY.00	BOUNDARY SURVEY (1 OF 2)
X-103-BNDY.01	BOUNDARY SURVEY (2 OF 2)
X-104-DA	DEVELOPABLE AREA EXHIBIT
X-105-FAR.00	FLOOR AREA RATIO - FIRST FLOOR (GRADE)
X-106-FAR.01	FLOOR AREA RATIO - 2ND FLOOR
X-107-FAR.02	FLOOR AREA RATIO - 3RD FLOOR
X-108-FAR.03	FLOOR AREA RATIO - 4TH FLOOR & ROOF
X-109-MCP.00	MASTER CONCEPT PLAN FIRST FLOOR
X-110-MCP.01	MASTER CONCEPT PLAN SECOND FLOOR
X-111-MCP.02	MASTER CONCEPT PLAN THIRD FLOOR
X-112-MCP.03	MASTER CONCEPT PLAN FOURTH FLOOR
X-113-MCP.04	MASTER CONCEPT PLAN DEVIATIONS AND NOTES
X-114-MCP.05	MASTER CONCEPT PLAN BUILDING HEIGHT

Sheet Index	
Sheet Number	Sheet Name
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X-A202	EXTERIOR ELEVATIONS
X-A203	EXTERIOR ELEVATIONS
X-A301	BUILDING SECTIONS
X-501	PARKING LOCATIONS & CALCULATIONS
X-502-RW.00	RIGHT OF WAY & SIDEWALK/BUFFER PLAN
X-503-RW.01	RIGHT OF WAY & SIDEWALK/BUFFER PLAN
X-504-RW.02	RIGHT OF WAY & SIDEWALK/BUFFER PLAN
X-605-COP.01	CONSUMPTION ON PREMISES DIAGRAM
X-606-COP.02	CONSUMPTION ON PREMISES DIAGRAMS PEDESTRIAN CIRCULATION
X-507-VT	VISIBILITY TRIANGLES

MASTER CONCEPT PLAN & EXHIBITS



PROJECT:
TPI-FMB CPD

LOCATION:
FORT MYERS BEACH
FLORIDA

CLIENT:



TPI HOSPITALITY
100% Employee Owned

TPI HOSPITALITY
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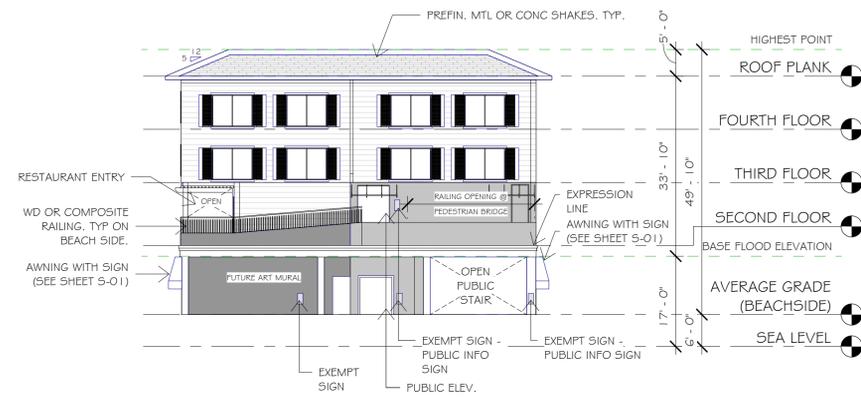
REVISIONS	DATE

PROJECT MANAGER: TME
DRAWING BY: DAL
JURISDICTION: TOWN OF FORT MYERS BEACH
DATE: 6/8/2018

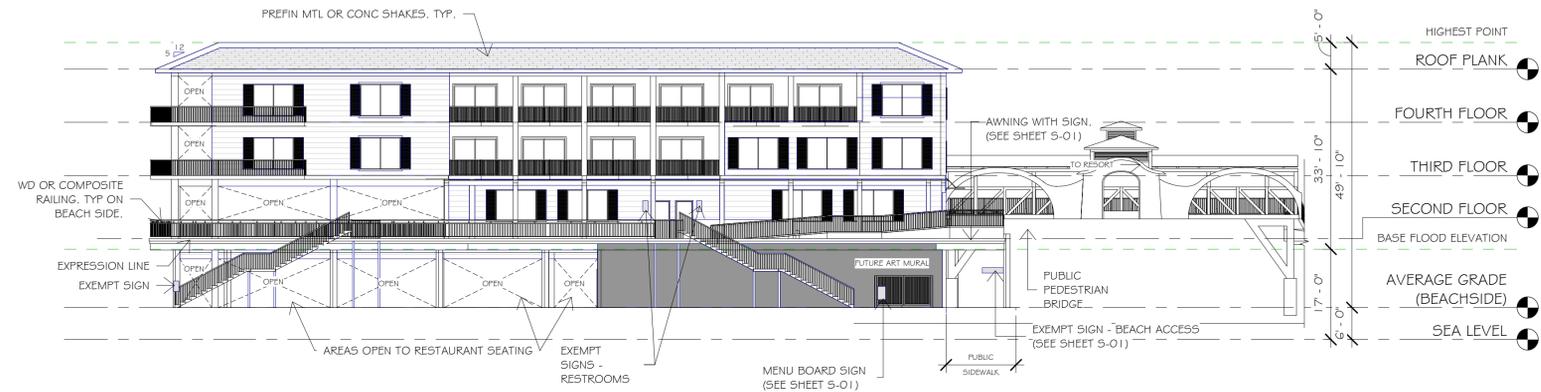
SHEET TITLE:
FUTURE LAND USE AND PROJECT BOUNDARY

SHEET NUMBER: X-101-FLU
JOB/FILE NUMBER: 15069-14

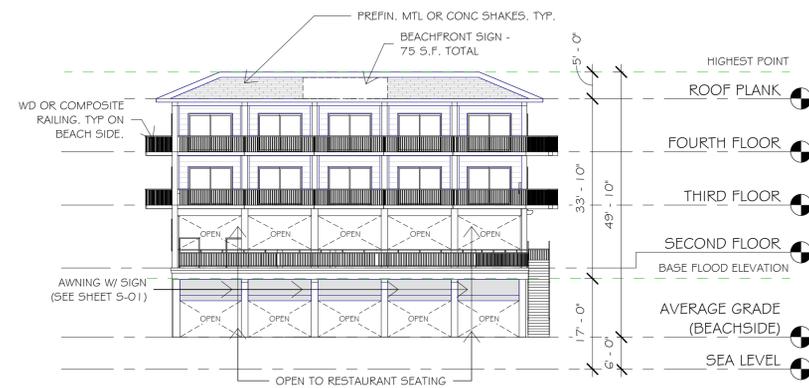
RESTAURANT



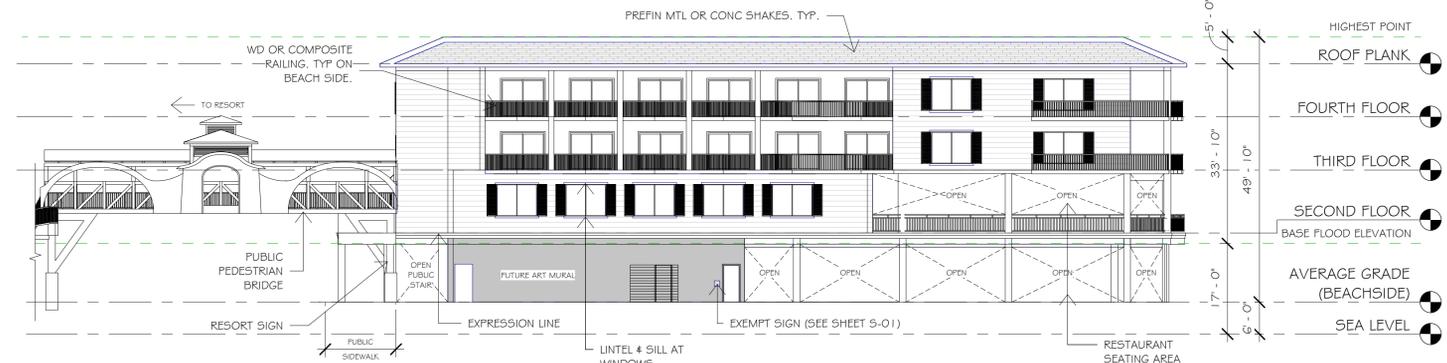
1 BEACHSIDE RESTAURANT - NORTH ELEVATION
1/16" = 1'-0"



2 BEACHSIDE RESTAURANT - EAST ELEVATION
1/16" = 1'-0"



3 BEACHSIDE RESTAURANT - SOUTH ELEVATION
1/16" = 1'-0"



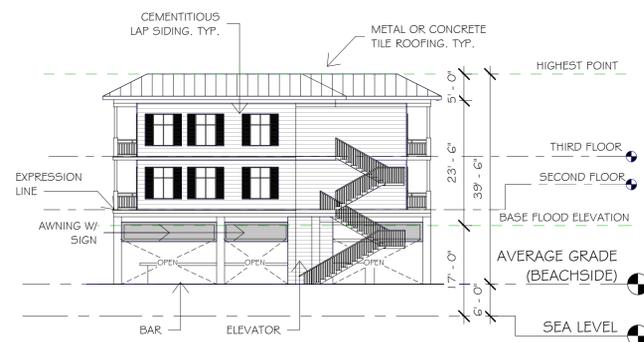
4 BEACHSIDE RESTAURANT - WEST ELEVATION
1/16" = 1'-0"

POOL VENUE



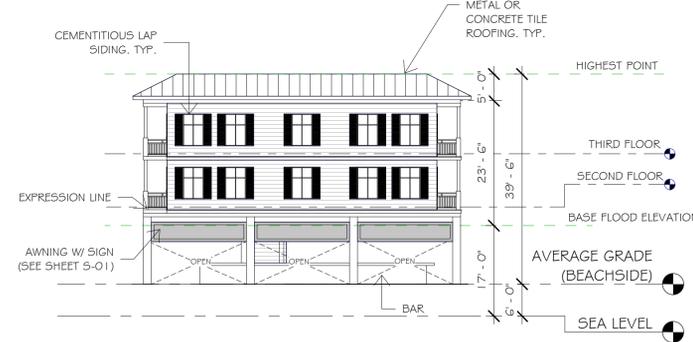
5 POOL BAR - NORTH ELEVATION
1/16" = 1'-0"

139 / 571 S.F. = 24% WINDOWS @ UPPER FLOORS



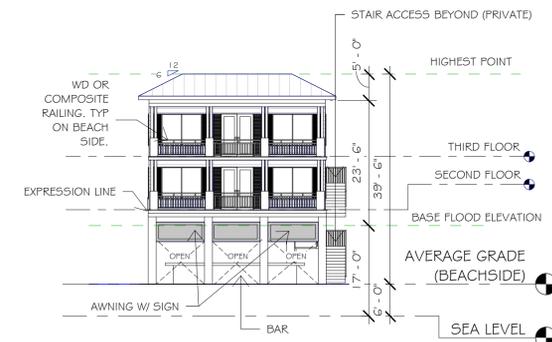
7 POOL BAR - WEST ELEVATION
1/16" = 1'-0"

208 / 1018 S.F. = 20% WINDOWS @ UPPER FLOORS



6 POOL BAR - EAST ELEVATION
1/16" = 1'-0"

225 / 690 S.F. = 32% WINDOWS @ UPPER FLOORS



8 POOL BAR - SOUTH ELEVATION
1/16" = 1'-0"

125 / 1018 S.F. = 12% WINDOWS @ UPPER FLOORS

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH FLORIDA

CLIENT:



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REVISIONS DATE

PROJECT MANAGER: Checker

DRAWING BY: Author

JURISDICTION: TOWN OF FORT MYERS BEACH

DATE: -

SHEET TITLE:

EXTERIOR ELEVATIONS

SHEET NUMBER: X-A203

JOB/FILE NUMBER: 30479

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



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REVISIONS DATE

PROJECT MANAGER: JDH

DRAWING BY: ADO

JURISDICTION: TOWN OF FORT MYERS BEACH

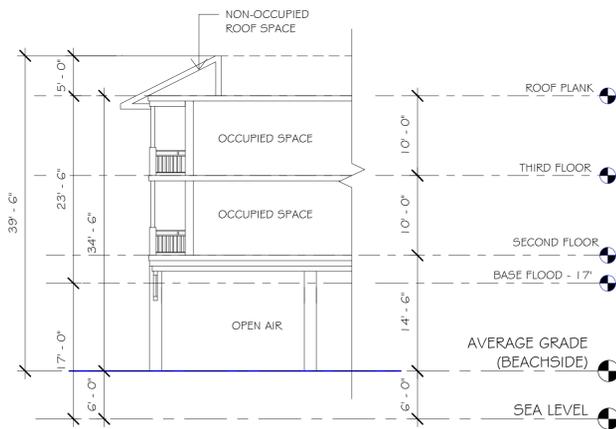
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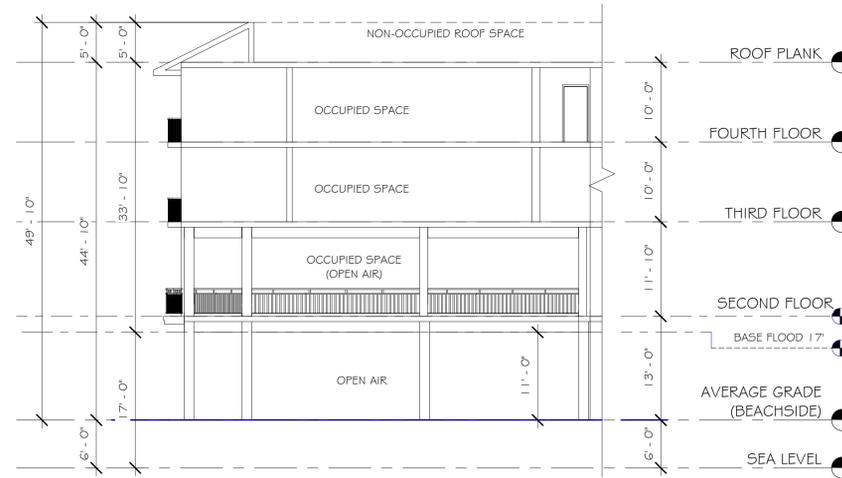
**BUILDING
SECTIONS**

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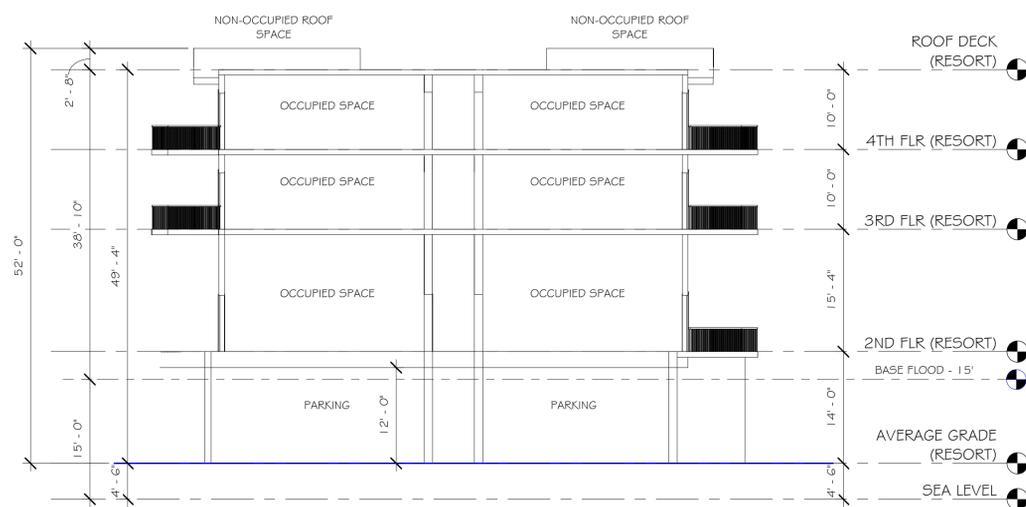
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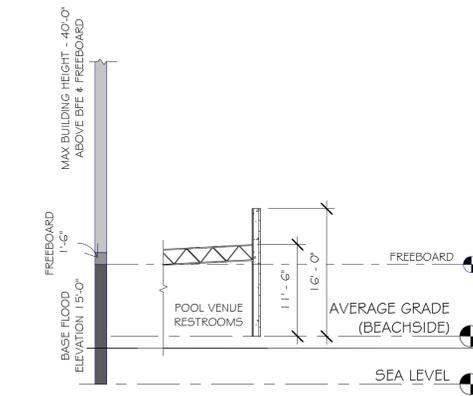
① SCHEMATIC BUILDING SECTION - BAR
BUILDING INSIDE AQUATICS VENUE
3/32" = 1'-0"



② SCHEMATIC BUILDING SECTION -
BEACHSIDE RESTAURANT
3/32" = 1'-0"



③ SCHEMATIC BUILDING SECTION - HOTEL
BUILDING
3/32" = 1'-0"



④ SCHEMATIC BUILDING SECTION @ POOL
VENUE RESTROOMS
3/32" = 1'-0" (EXISTING BUILDING)

*NO PROPOSED CHANGE TO EXISTING
STRUCTURAL ELEMENTS OR HEIGHT.
RENOVATION TO BE CONFINED TO
50% RENOVATION RULE.

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



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REVISIONS DATE

PROJECT MANAGER: JDH

DRAWING BY: ADO

JURISDICTION: TOWN OF FORT MYERS BEACH

DATE: -

SHEET TITLE:

PARKING
LOCATIONS &
CALCULATIONS

SHEET NUMBER: X-501

JOB/FILE NUMBER: 30479

TPI - FMB PARKING CALCULATIONS
Friday, April 20, 2018

DEVELOPMENT TYPE	QUANTITY	LDC RATE	SPACES
Hotel Rooms < 450 SF	246	1.2 per room	295
Hotel Rooms > 450 SF	8	1.5 per room	12
Beach Restaurant	16059	8 per 1,000 SF	129
Outdoor Seating in Beach Restaurant	1364	8 per 1,000 SF	7
Bar in Beach Restaurant	1514	5 per 1,000 SF	8
Beach Club	325	1 per 4 seats	81
TOTAL			532

TOTAL REQUIRED WITH 67% DOWNTOWN REDUCTION FACTOR APPLIED 357

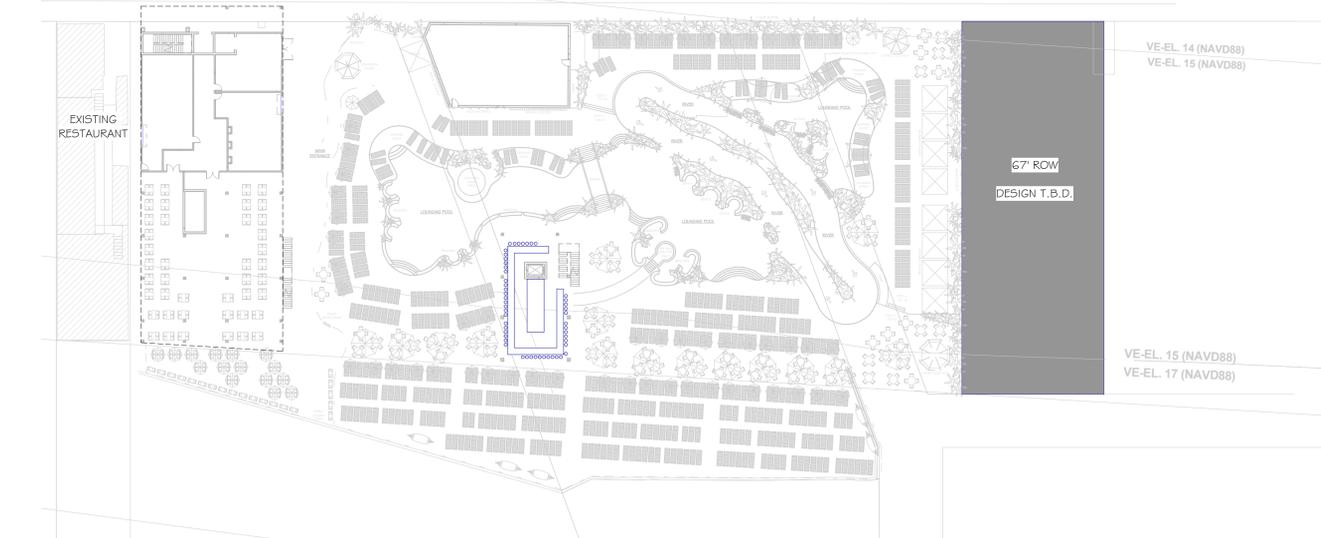
PARKING PROVIDED ON SITE	359
PARKING PROVIDED OFF SITE	50
TOTAL PARKING PROVIDED	409

PARKING PLAN NOTES:

**MINOR MODIFICATIONS MAY BE NECESSARY AS WE FULLY DEVELOP THE STRUCTURAL DESIGN AND LOCATE COLUMNS MORE PRECISELY. **



① PARKING PLAN - NORTH OF ESTERO
1" = 40'-0"



② PARKING PLAN - SOUTH OF ESTERO
1" = 40'-0"

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:



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REVISIONS DATE

PROJECT MANAGER: TME

DRAWING BY: DAL

JURISDICTION: TOWN OF FORT MYERS BEACH

DATE: 4/27/2018

SHEET TITLE:

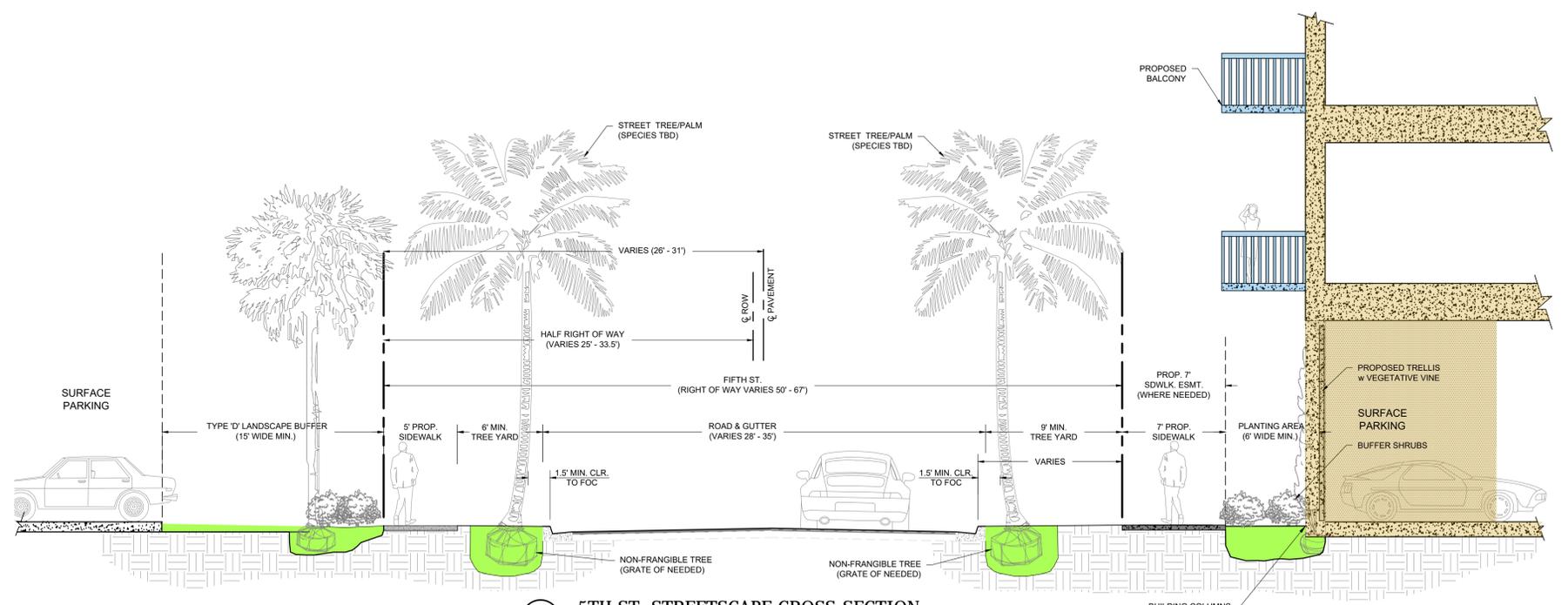
RIGHT OF WAY & SIDEWALK/BUFFER PLAN

SHEET NUMBER: X-504-RW.02

JOB/FILE NUMBER: 15069-13



A FIFTH AVENUE
Scale: 1"=20'



B 5TH ST. STREETSCAPE CROSS-SECTION
Scale: 1"=5'

LEGEND

	PROPOSED BUILDING
	PROPOSED BUILDING OVERHANG
	PROPOSED SIDEWALK
	PROPOSED LANDSCAPE AREA

- NOTES:**
- FINAL STREET TREE SPACING BASED ON SPECIES SELECTED.
 - STREET TREE SPACING IS SPECIES DEPENDANT. TREES/PALMS SHALL BE SPACED SO AS TO PROVIDE A CONTINUOUS CANOPY BASED ON AVERAGE CANOPY SIZE FOR THE SPECIES, BUT WITH EVERY OTHER TREE/PALM REMOVED. NOTE: FOR COCONUT PALMS THE AVERAGE CANOPY IS +20' WIDE RESULTING IN A 40' AVERAGE SPACING & 12' FOR SABAL PALMS RESULTING IN A 24' AVERAGE SPACING. FINAL LOCATION AND SPACING BASED ON EXISTING CONDITIONS (I.E. UTILITIES) AND TO ENHANCE ARCHITECTURAL DETAILS OF THE PROPOSED BUILDING.
 - BUILDING COLUMNS MAY ENCR OACH A MAX. OF 2' INTO THE 5' WIDE PLANTING AREA.
 - THE 5' PLANTING AREA IS MEASURED TO THE REAR (I.E. GARAGE SIDE) OF THE VEGETATED GREENSCREEN.
 - THE HORIZONTAL OFFSET FOR THE PROPOSED STREET TREES ALONG ESTERO BLVD WILL BE BASED ON THE CURRENT FDOT/COUNTY MINIMUM STANDARDS IN PLACE AT THE TIME OF THE DEVELOPMENT ORDER APPLICATION SUBMITTAL.

