

LPA RESOLUTION 2025-06

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING WITH CONDITIONS VARIANCE APPLICATION 20250027 FOR THE PROPERTY LOCATED AT 1901 ESTERO BLVD., FORT MYERS BEACH (STRAP NUMBER 19-46-24-W4-0090B.0080) FOR THE FOLLOWING 5 VARIANCES: 1) A VARIANCE OF 15 FEET TO ALLOW A FRONT SETBACK OF 25 FEET WHERE 5-10 FEET IS REQUIRED; 2) A VARIANCE OF 5 FEET TO ALLOW A REAR SETBACK OF 20 FEET WHERE 25 FEET IS REQUIRED; 3) A VARIANCE TO BUFFER REQUIREMENTS TO PROPOSE A BETTERMENT PLAN WITHOUT A BOUNDARY WALL; 4) A VARIANCE TO PARKING LOCATION REQUIREMENTS TO ALLOW BACK-OUT PARKING ALONG ESTERO BLVD. AND OHIO AVENUE; AND 5) A VARIANCE TO PARKING AMOUNT REQUIREMENTS FROM 22 REQUIRED PARKING SPACES TO 9 SPACES, FOR A PROPOSED MIXED-USE COMMERCIAL DEVELOPMENT INCLUDING RETAIL AND RESTAURANT USES; 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, render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, James Ink PE on behalf of YEAA, LLC is requesting the following 5 variances from the Land development Code (LDC) to construct a commercial property with several tenants: 1) a change to the minimum front street setback per Section 34-674(a)(1) from the required 5–10-foot build to line to 25 feet for the existing structure; 2) a change to the minimum rear setback per Section 34-674(b)(1)(a) from the required 25 feet to 20 feet; 3) a change in the residential/commercial buffer requirements per Section 34-677(b)(2) from the required Type C or F buffer requirement per Table 10-8 in 10-416(d) to a proposed betterment plan; 4) a change to allow parking along Estero Blvd and Ohio Ave instead of the required off-street parking in Section 34-2015; and 5) a change to the required number of parking spaces in Section 34-2020 from 22 parking spaces to 9 spaces where the number of spaces prior to Hurricane Ian was 12; and

WHEREAS, the STRAP number for the subject property is 19-46-24-W4-0090B.0080; and

WHEREAS, the Property is located in the “Pedestrian Commercial” Future Land Use of the Comprehensive Plan and the “Downtown” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, In accordance with sec. 34-3241(c), a variance is not required for existing parking spaces in front of the existing non-conforming structure since no alteration is being made to existing spaces and does not violate Div. 3 of Article V. of Chapter 34.

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on April 8, 2025, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA made findings and conclusions regarding each requested variance based on the following criteria, as further described in Exhibit A:

A. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

WHEREAS, eligible members of the LPA determined the proposed variances are consistent with the Fort Myers Beach Comprehensive Plan and voted 7 to 0 by roll call vote to approve the requested variances with the following conditions:

- 1) None of the 5 variances give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 2) The Property owner must ensure that they adhere to the maximum FAR for the Pedestrian Commercial FLU.
- 3) Property owner must have complete visual screening that enclose all mechanical equipment to obscure from the public right-of-way and from the immediate neighbor's property to help mitigate noise.
- 4) Property owner must ensure that the parking space dimensions adhere to LDC Sec. 34-2016

- 5) Type F buffer with foxtail palms in lieu of the 10 trees along the rear (north) property line will be provided with a 6-foot high vinyl fence.
- 6) Structure access on the northside (rear) of the property, abutting the single-family residence, will only be used for employee and emergency access.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and
- 2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.
2. VAR20250048, with the conditions contained herein, received unanimous approval from eligible voting members of the LPA on April 8, 2025.
3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

The foregoing Resolution was adopted upon a motion by John McLean and seconded by Jim Dunlap and upon being put to a vote, the result was as follows:

LPA Chair Cereceda	Aye
LPA Vice Chair Plummer	Aye
LPA Member Boan	Aye
LPA Member Eckmann	Aye
LPA Member Sudduth	Absent
LPA Member McLean	Aye
LPA Member Dunlap	Aye

DULY PASSED AND ADOPTED this 8th day of April 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: 
Anita Cereceda (May 1, 2025 13:11 EDT)
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

By: 
Nancy Stuparich (May 1, 2025 14:51 EDT)
Vose Law Firm, Town Attorney

ATTEST:

By: 
Amy Baker (May 1, 2025 15:29 EDT)
Amy Baker, Town Clerk

Exhibit A: Findings of Specific Variances

Exhibit B: Site Plan

Exhibit A: Findings of Specific Variances

Ordinance 24-06

Evaluation of each variance request per LDC criteria.

Variance #1

1) A CHANGE TO THE MINIMUM FRONT STREET SETBACK PER SECTION 34-674(A)(1) FROM THE REQUIRED 5–10-FOOT BUILD TO LINE TO 25 FEET FOR THE EXISTING STRUCTURE;

A. There **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

The property was substantially destroyed by Hurricane Ian.

B. The conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.

The applicant is choosing to maintain a heavily damaged structure instead of demolishing and rebuilding a new structure.

C. The variance granted **is**/is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

The variance request does not further the non-conformities of the existing structure.

D. The granting of the variance **will**/will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The variance will be injurious to the public realm, as the increased setback is to allow for back-out parking that creates a safety hazard for pedestrians and drivers.

E. The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Concur

Variance #2

2) A CHANGE TO THE MINIMUM REAR SETBACK PER SECTION 34-674(B)(1)(A) FROM THE REQUIRED 25 FEET TO 20 FEET;

A. There **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

The property was substantially destroyed by Hurricane Ian.

B. The conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.

The applicant is choosing to maintain a heavily damaged structure instead of demolishing and rebuilding a new structure.

C. The variance granted **is**/is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

The variance request does not further the non-conformities of the existing structure.

D. The granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

The request will not be injurious to the neighborhood, as it is to allow the existing stairway to remain and to construct a solid waste enclosure along Ohio Street, at a farther distance from the adjacent residential uses. This request only applies to the rear egress stairway from the second floor of the existing building and a solid waste enclosure. There is no other area where the 25' rear setback will not be consistent with the Land Development Code.

E. The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Concur

Variance #3

3) A CHANGE IN THE RESIDENTIAL/COMMERCIAL BUFFER REQUIREMENTS PER SECTION 34-677(B)(2) FROM THE REQUIRED TYPE C OR F BUFFER REQUIREMENT PER TABLE 10-8 IN 10-416(D) TO A PROPOSED BETTERMENT PLAN

A. There **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

The property was substantially destroyed by Hurricane Ian.

B. The conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.

The applicant is choosing to maintain a heavily damaged structure instead of demolishing and rebuilding a new structure. The applicant would prefer not to provide the required buffer wall due the space it would occupy in the setback area and its impact on the existing structure's access.

C. The variance granted **is**/is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

The variance request does not further the non-conformities of the existing structure. An existing vinyl fence is present on the abutting neighbor's property.

D. The granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

The applicant will provide the required type C plantings but is requesting not to construct a wall. As an existing fence is present injury to the neighborhood is unlikely.

E. The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Concur

Variance #4

4) A CHANGE TO ALLOW PARKING ALONG ESTERO BLVD AND OHIO AVE INSTEAD OF THE REQUIRED OFF-STREET PARKING IN SECTION 34-2015

A. There **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

The property was substantially destroyed by Hurricane Ian.

B. The conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.

The applicant is choosing to maintain a heavily damaged structure instead of demolishing and rebuilding a new structure.

C. The variance granted is/**is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

The variance request does not further the non-conformities of the existing structure. However, these parking spaces were existing non-conformities and were not permitted under the land development code. The site could be reorganized to locate all or more of the street front parking to an off-street location.

D. The granting of the variance **will**/will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The variance will be injurious to the public realm, as the back-out parking that creates a safety hazard for pedestrians and drivers.

E. The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Concur

Variance #5

5) A CHANGE TO THE REQUIRED NUMBER OF PARKING SPACES IN SECTION 34-2020 FROM 22 PARKING SPACES TO 9 SPACES WHERE THE NUMBER OF SPACES PRIOR TO HURRICANE IAN WAS 12

A. There **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

The property was substantially destroyed by Hurricane Ian.

B. The conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.

The applicant is choosing to maintain a heavily damaged structure instead of demolishing and rebuilding a new structure.

C. The variance granted is/**is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

The variance request does not further the non-conformities of the existing structure. However, the site could be reorganized to locate all or more of the street front parking to an off-street location. A reorganized site could provide a greater number of parking spaces.

D. The granting of the variance **will**/will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The variance will be injurious to the public realm, as the increased setback is to allow for back-out parking that creates a safety hazard for pedestrians and drivers. The reduced parking may impact the nearby single-family home through increased traffic and illegal parking as customers search for parking.

E. The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Concur



FAR CALCULATION

LOT SIZE	13,162 SF
ALLOWABLE FAR:	1.4
ALLOWABLE SF:	18,427 SF
EXISTING SF:	4,150 SF
PROPOSED SF:	3,745 SF
TOTAL BUILDING:	7,895 SF
CALCULATED FAR:	0.60

VARIANCE/DEVIATION #3
CHAMFER RESIDENTIAL BUFFER AS REQUIRED IN 34-677(b)(2) OF TYPE C/F BUFFER TO PROPOSED LANDSCAPE BETTERMENT PLAN

VARIANCE/DEVIATION #2
CHANGE 25' REAR SETBACK LINE FROM 25' PER LDC TO 20' FOR EXISTING STAIRS AS EGRESS FOR EXISTING 2ND FLOOR

PARKING SUMMARY

USE	UNITS	REQUIRED RATIO	SPACES REQUIRED	SPACES PROVIDED
RETAIL-PHASE ONE	2075	3 SPACES/ 1000 SF	6 ⁽¹⁾	
RESTAURANT - PHASE ONE	2075	8 SPACES/ 1000 SF	16 ⁽¹⁾	
RETAIL-PHASE TWO	3745	3 SPACES/ 1000 SF	11 ⁽¹⁾	
67% MULTIPLIER DOWNTOWN REDUCTION			11	
PARKING TOTALS			22	9

NOTES:

- TOTAL PROVIDED PARKING INCLUSIVE OF 1 ADA ACCESSIBLE SPACE.
- DOWNTOWN ALLOWANCE OF 33% PARKING REDUCTION APPLIED PER 34-676(a)(4)

VARIANCE/DEVIATION #5
REDUCTION OF PARKING SPACE REQUIREMENT SINCE AVAILABLE PUBLIC PARKING IN AREA.

LAND DATA

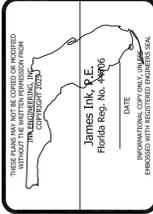
	PROJECT TOTAL (SF)	PROJECT TOTAL (AC.)	% TOTAL
IMPERVIOUS			
BUILDING (PHASE ONE AND TWO)	5,620	0.134	18.1%
ASPHALT PAVERS	1,131	0.026	25.6%
CONCRETE	1,833	0.042	5.4%
IMPERVIOUS TOTAL	8,784	0.202	67.3%
PERVIOUS			
	4,379	0.100	32.7%
	13,163	0.302	100%

PROPERTY REGULATIONS

ADDRESS:	1901 ESTERO BLVD
STRAP:	19-46-24-W4-0090B.0080
ZONING:	DOWNTOWN
FUTURE LAND USE:	PEDESTRIAN COMMERCIAL
FEMA FLOOD:	VE: ELEVATION 14.0'
PROPERTY REGULATIONS IN DOWNTOWN DISTRICT	
BUILD TO LINE:	5 TO 10 FT
MINIMUM REAR SETBACK:	25 FT
MINIMUM SIDE SETBACK:	5 FT
MINIMUM BUILDING FRONTAGE:	35%
MAXIMUM BUILDING HEIGHT:	30 FT ABOVE BASE FLOOD
MAXIMUM NUMBER OF STORIES:	3
MAX FLOOR AREA RATIO:	1.4 (18,450 SF)
OFF STREET PARKING REDUCTION:	33%
OPEN SPACE REQUIREMENT:	0%

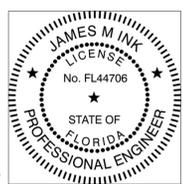
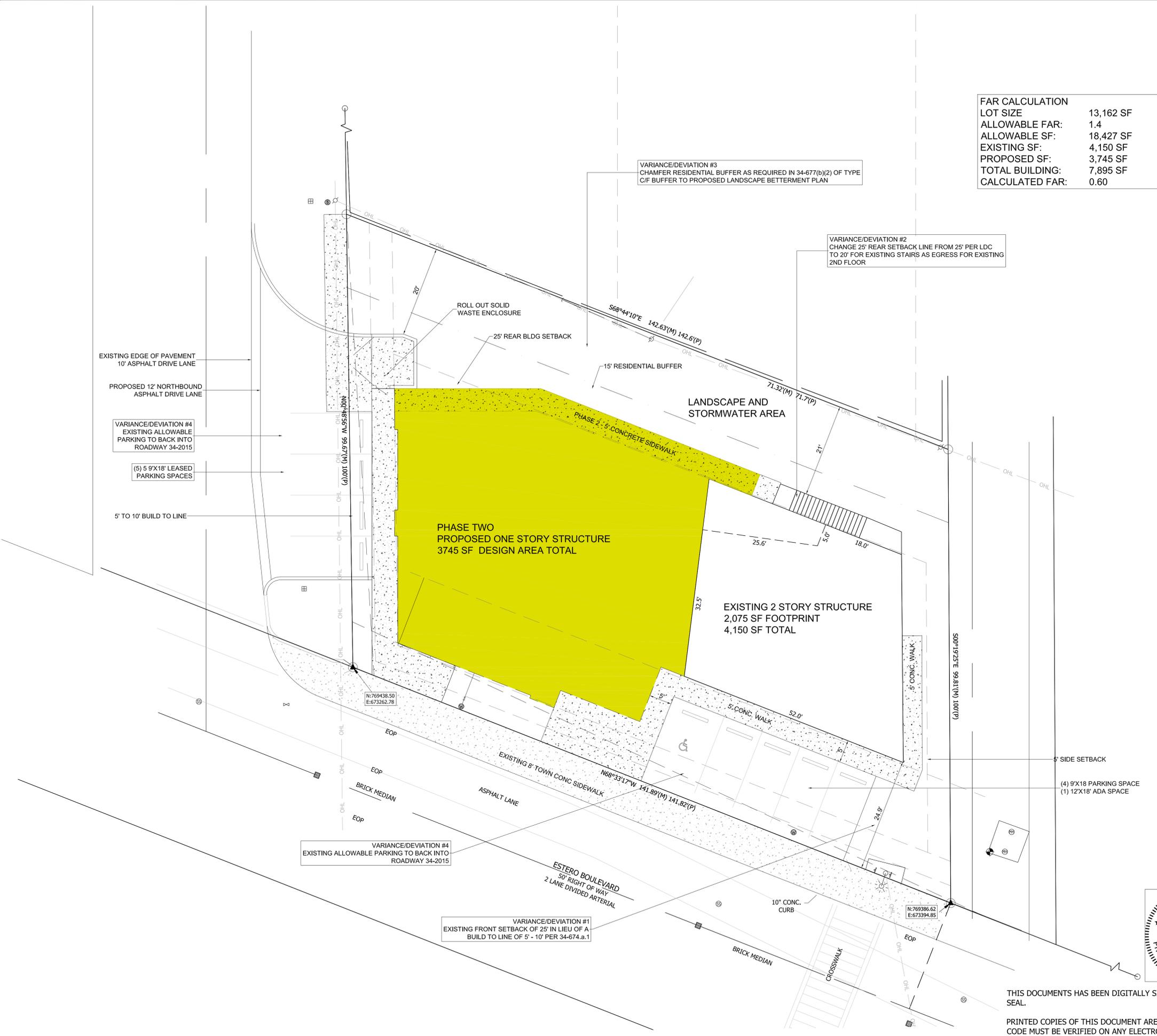
REV	DATE	DESCRIPTION

VARIANCE EXHIBIT
1901 Estero Design Box
YEA, LLC
1901 ESTERO BLVD, FORT MYERS BEACH, FL 33931



INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING
2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERING.COM

PROJECT NO.	23019
PROJECT MANAGER	James Ink P.E.
DRAWN BY	BWM
DATE	02.2025
SCALE	1" = 10'
SHEET NO.	1
OF	1



THIS DOCUMENTS HAS BEEN DIGITALLY SIGNED AND SEALED BY JAMES M INK, PE ON THE DATE ADJACENT TO THE SEAL.

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1901 ESTERO BLVD - VARIANCE EXHIBIT