

ORDINANCE 24-35

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR 6.02 ACRES OF THE PROPERTY LOCATED AT 275/322 ESTERO BLVD, 200 ESTERO BLVD, 192 ESTERO BLVD COMMON ELEMENT ONLY, 142 ESTERO BLVD, 171-191 ESTERO BLVD, 251-281 ESTERO BLVD, AND 309 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-WI-0070D.028A, 24-46-23-WI- 00700.0340, 24-46-23-WI-00700.0290, 24-46-23-WI-00700.0330, 24-46-23-WI-00700.0320 , 24-46-23-WI-03700.00CE, & 24-46-23-WI-04100.00CE IN FORT MYERS BEACH, TO ALLOW EXPANSION OF THE EXISTING PINK SHELL BEACH RESORT TO INCLUDE A NEW 40 UNIT RESORT HOTEL 2 ADDITIONAL HOTEL UNITS IN THE WHITE SANDS BUILDING, AND TWO STAND-ALONE GUEST STRUCTURES; 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, JABO, LLC, the owner, and RVI, as agent for the property located at 275/322 Estero blvd., 200 Estero blvd., 192 Estero blvd. common element only, 142 Estero blvd., 171-191 Estero blvd., 251-281 Estero blvd., and 309 Estero blvd., generally identified as strap numbers 24-46-23-w1-0070d.028a, 24-46-23-w1-00700.0340, 24-46-23-w1-00700.0290, 24-46-23-w1-00700.0330, 24-46-23-w1-00700.0320, 24-46-23-w1-03700.00ce, & 24-46-23-w1-04100.00ce in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD and Commercial Resort (CR) to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to amend the approved development to allow a new 40 lodging unit hotel, two (2) new hotel rooms in the White Sands building, and one guest structure gulf side and one on 309 Estero Boulevard, in addition to the existing approved development of 195 resort units, a marina and resort accessory uses ; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on December 3, 2024; and

WHEREAS, at the December 3, 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 Section 34-85 of the Town Land Development Code; and

WHEREAS, at the December 3, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and Member McLean

made a motion for denial without prejudice that was seconded by Vice Chair Plummer, and the LPA recommended denial without prejudice by a 4-2 vote, with one member absent; and

WHEREAS, on January 8, 2025 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 Section 34-85 of the LDC; 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 the Fort Myers News-Press more than 10 days prior to the Town Council on February 3, 2025; and

WHEREAS, at the February 3, 2025 public hearing, 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, Exhibit A is the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

WHEREAS, Exhibit B provides the approved development regulations and the schedule of uses during the development process; and

WHEREAS, Exhibit C provides a list of conditions if this CPD rezoning is approved

WHEREAS, Exhibit D provides a historical summary of approvals for the Pink Shell development; and

WHEREAS, the Town Council finds that this request to rezone the property from the CPD and CR to CPD with MCP with 7 deviations to the LDC in order to develop a resort hotel development with 40 lodging units, 2 guest units and 2 additional hotel units in the place of one floor of the White Sands spa, is a unique application, which does not set precedent for future development or rezoning applications; and

WHEREAS, the requested deviations from the LDC include:

Deviation #1

Area #3: Deviate from LDC §10-416(d)(2) Table 10-8 requiring a Type C buffer with a wall when a proposed commercial parking lot is next to a multifamily residential property; to allow a Type C buffer with no wall to allow visibility to the redesigned public boardwalk.

Deviation #2

Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 20 feet as a rear setback; to allow a 15-foot rear setback.

Deviation #3

Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 20 feet as a side setback; to allow a 10-foot side setback on the western boundary and a 7.5-foot setback on the eastern boundary in CPD Area #3 for the guest unit structure on 309 Estero Boulevard.

Deviation #4

Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 20 feet as a side setback; to allow a 10-foot side setback on the western boundary, abutting Bowditch Point Park, in CPD Area #4 for the new 40-unit hotel/condo building.

Deviation #5

Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure on a waterfront lot shall be placed closer than 25 feet to a waterbody as a rear setback; to allow a 10-foot rear setback in CPD Area #4 for the new 40-unit hotel/condo building.

Deviation #6

Deviate from LDC §34-675(b) that requires a maximum height of 30 feet above base flood elevation and no taller than three stories; to allow a height of:

- 60 feet as measured from one foot over base flood elevation (BFE+1) or
- Five (5) stories (six (6) stories over ground level parking).

Deviation #7

Deviate from LDC §34-1803(a)(1) that establishes hotel and motel guest units to be substituted for the dwelling units setting the allowable intensity by equivalency factors of up to 2.0 per density unit, in this case in the Mixed Residential land use category; to allow an increase in the factor to 6.7 for the entire resort property that is included in the CPD boundary.

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):

- a. Each item enhances the achievement of the objectives of the planned development; and
- b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to approve Ordinance 24-35 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 24-35 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 24-35 is adopted and the approved Master Concept Plan set forth in Exhibit A, the schedule of uses found in Exhibit B, the conditions of approval found in Exhibit C, and a summary of historical zoning resolutions for this property found in Exhibit D, attached hereto and incorporated herein by this reference are 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.

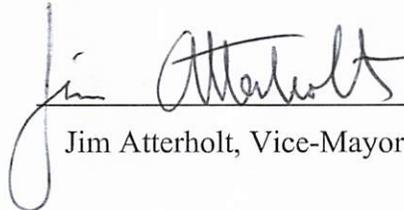
Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

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

DULY PASSED AND ADOPTED on this 3rd day of February 2025.

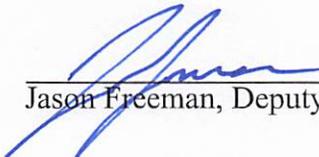
Dan Allers, Mayor	<u>Abstained</u>
Jim Atterholt, Vice Mayor	<u>Aye</u>
John R. King, Council Member	<u>Aye</u>
Scott Safford, Council Member	<u>Aye</u>
Karen Woodson, Council Member	<u>Aye</u>

FORT MYERS BEACH TOWN COUNCIL



Jim Atterholt, Vice-Mayor

ATTEST:



Jason Freeman, Deputy Clerk/ Legislative Liaison

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

Nancy Stuparich

Nancy Stuparich (Jun 23, 2025 16:33 EDT)

Vose Law Firm, LLP, Town Attorney

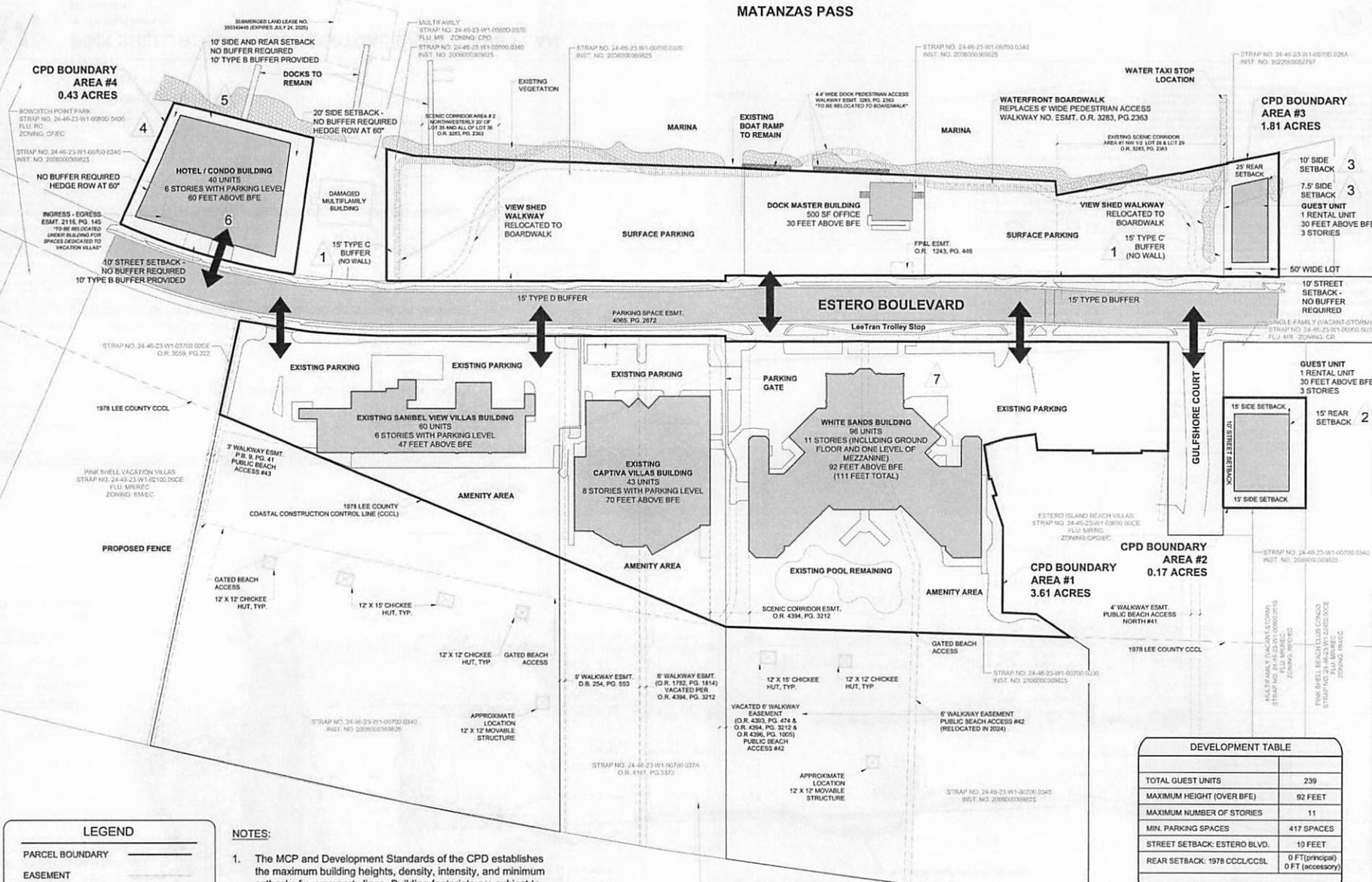
This Resolution was filed in the Office of the Town Clerk on this 27th day of June 2025.

Attachments:

- A – Master Concept Plan
- B – Schedule of Uses
- C – Conditions of Approval
- D – Historical Zoning Resolutions



PINK SHELL RESORT & MARINA CPD
MASTER CONCEPT PLAN
JABO, LLC
FORT MYERS BEACH, FL



LEGEND

- PARCEL BOUNDARY
- EASEMENT
- VEHICULAR INGRESS & EGRESS
- BUILDING
- DEVIATIONS

#

- NOTES:**
- The MCP and Development Standards of the CPD establishes the maximum building heights, density, intensity, and minimum setbacks from property lines. Building footprints are subject to modification/reconfiguration at time of local development order.
 - The proposed development will adhere to all federal, state, and local flood regulations.
 - The built environment is entirely within the VE Flood Zone with a base flood elevation of 13 feet per FEMA BFE per Flood Map Panel 12071C0554G

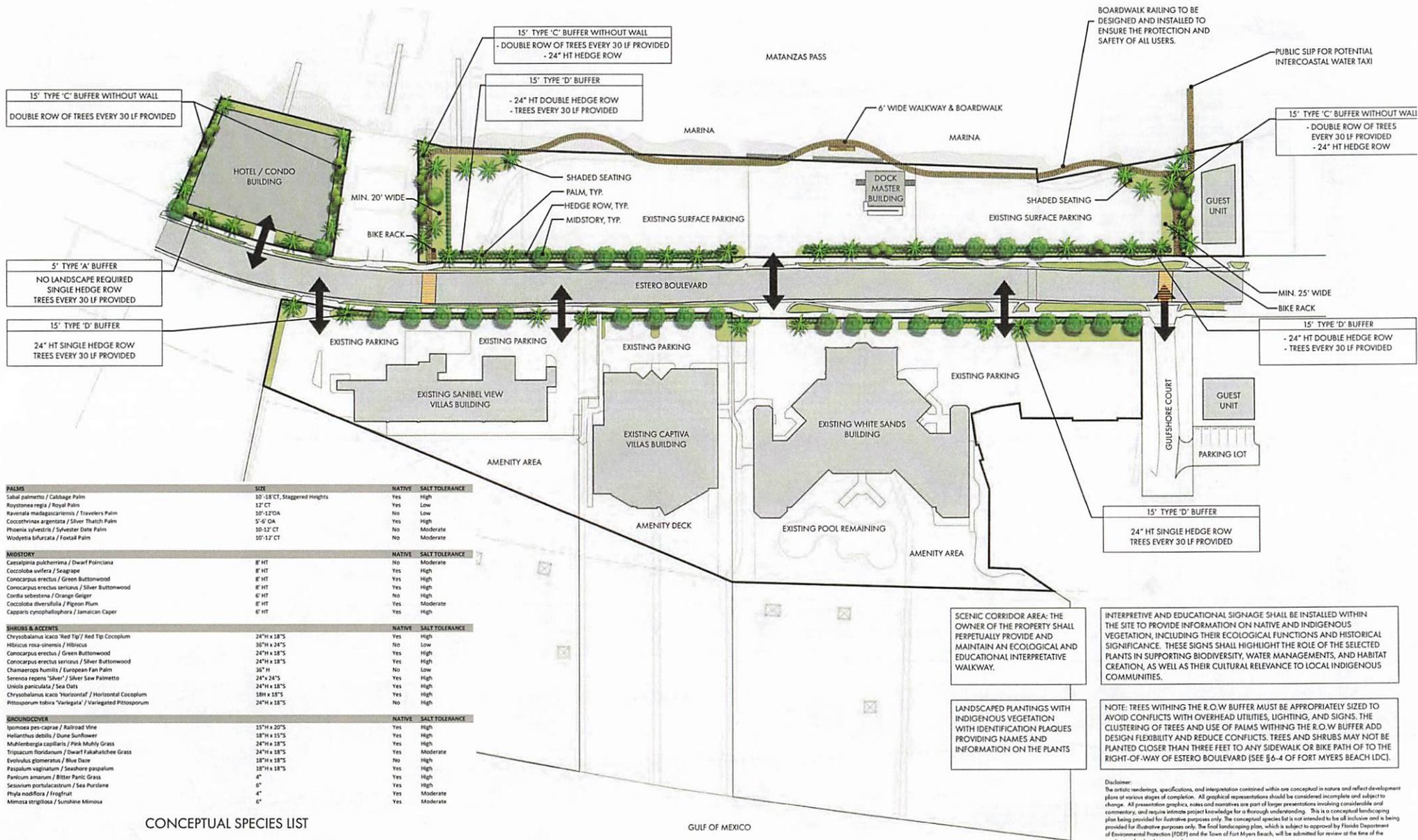
DEVELOPMENT TABLE	
TOTAL GUEST UNITS	239
MAXIMUM HEIGHT (OVER BFE)	92 FEET
MAXIMUM NUMBER OF STORIES	11
MIN. PARKING SPACES	417 SPACES
STREET SETBACK: ESTERO BLVD.	0 FT (prncpspl)
REAR SETBACK: 1978 CCCL/CCSL	0 FT (accessory)



PROJECT NO: 23000471
 DATE: 11/19/2024
 DRAWN: CH
 REVIEWED: FD

REVISIONS:

- 05/22/2023
- 06/15/2023
- 06/15/2024
- 07/15/2024
- 12/13/2024



PALMS	SIZE	NATIVE	SALT TOLERANCE
Sabal palmetto / Cabbage Palm	10'-18' CT, Staggered Heights	Yes	Low
Roystonea regia / Royal Palm	12' CT	Yes	Low
Ravennia madagascariensis / Travellers Palm	10'-12' O.A.	No	Low
Coccothrinax argentea / Silver Thatch Palm	5'-6' O.A.	Yes	High
Phoenix sylvestris / Syzestier Date Palm	10'-12' CT	No	Moderate
Wodyetia bifurcata / Foxtail Palm	10'-12' CT	No	Moderate
MIDSTORY	SIZE	NATIVE	SALT TOLERANCE
Caesalpinia pulcherrima / Dwarf Peinaciana	8' HT	No	Moderate
Coccoloba uvifera / Seagrape	8' HT	Yes	High
Conocarpus erectus / Green Buttonwood	8' HT	Yes	High
Conocarpus erectus var. serotinus / Silver Buttonwood	8' HT	Yes	High
Cordia sebestena / Orange Geiger	6' HT	No	High
Coccoloba diversifolia / Pigeon Plum	8' HT	Yes	Moderate
Capparis cynophallophora / Jamaican Caper	8' HT	Yes	High
SHRUBS & ACCENTS	SIZE	NATIVE	SALT TOLERANCE
Chrysobalanus icaco / Red Tip / Red Tip Coccoloba	24"H x 18"S	Yes	High
Hibiscus rosa-sinensis / Hibiscus	30"H x 24"S	No	Low
Conocarpus erectus / Green Buttonwood	24"H x 18"S	Yes	High
Conocarpus erectus var. serotinus / Silver Buttonwood	24"H x 18"S	Yes	High
Chamaerops humilis / European Fan Palm	36" H	No	Low
Sarcina repens 'Silver' / Silver Saw Palmetto	24" x 24"	Yes	High
Utricularia pumila / Sea Dats	24"H x 18"S	Yes	High
Chrysobalanus icaco 'horizontalis' / Horizontal Coccoloba	18"H x 18"S	Yes	High
Pittosporum tobira 'Variegata' / Variegated Pittosporum	24"H x 18"S	No	High
GROUNDCOVER	SIZE	NATIVE	SALT TOLERANCE
Ipomoea pes-caprae / Railroad Vine	15"H x 20"S	Yes	High
Helianthus debilis / Dune Sunflower	18"H x 15"S	Yes	High
Muhlenbergia capillaris / Pink Muhly Grass	24"H x 18"S	Yes	High
Tripsacum dandaneum / Dwarf Fakahalshie Grass	24"H x 18"S	Yes	Moderate
Evolvulus glomeratus / Blue Daze	18"H x 18"S	No	High
Paspalum vaginatum / Seashore paspalum	18"H x 18"S	Yes	High
Panicum amarium / Bitter Panic Grass	4"	Yes	High
Sesuvium portulacastrum / Sea Purslane	6"	Yes	High
Phyla nodiflora / Frogfruit	4"	Yes	Moderate
Mimosa strigillosa / Sunshine Mimosa	6"	Yes	Moderate

CONCEPTUAL SPECIES LIST

SCENIC CORRIDOR AREA: THE OWNER OF THE PROPERTY SHALL PERPETUALLY PROVIDE AND MAINTAIN AN ECOLOGICAL AND EDUCATIONAL INTERPRETATIVE WALKWAY.

INTERPRETIVE AND EDUCATIONAL SIGNAGE SHALL BE INSTALLED WITHIN THE SITE TO PROVIDE INFORMATION ON NATIVE AND INDIGENOUS VEGETATION, INCLUDING THEIR ECOLOGICAL FUNCTIONS AND HISTORICAL SIGNIFICANCE. THESE SIGNS SHALL HIGHLIGHT THE ROLE OF THE SELECTED PLANTS IN SUPPORTING BIODIVERSITY, WATER MANAGEMENTS, AND HABITAT CREATION, AS WELL AS THEIR CULTURAL RELEVANCE TO LOCAL INDIGENOUS COMMUNITIES.

NOTE: TREES WITHING THE R.O.W BUFFER MUST BE APPROPRIATELY SIZED TO AVOID CONFLICTS WITH OVERHEAD UTILITIES, LIGHTING, AND SIGNS. THE CLUSTERING OF TREES AND USE OF PALMS WITHING THE R.O.W BUFFER ADD DESIGN FLEXIBILITY AND REDUCE CONFLICTS. TREES OR SHRUBS MAY NOT BE PLANTED CLOSER THAN THREE FEET TO ANY SIDEWALK OR BIKE PATH OF TO THE RIGHT-OF-WAY OF ESTERO BOULEVARD (SEE § 6-4 OF FORT MYERS BEACH LDC).

Disclaimer: The artistic renderings, specifications, and interpretation contained within are conceptual in nature and reflect development plans at various stages of completion. All graphical representations should be considered incomplete and subject to change. All presentation graphics, notes and narratives are part of larger presentations involving considerable and commentary, and require extensive project knowledge for a thorough understanding. This is a conceptual landscaping plan being provided for illustrative purposes only. The conceptual species list is not intended to be all inclusive and is being provided for illustrative purposes only. The final landscaping plan, which is subject to approval by Florida Department of Environmental Protection (FDEP) and the Town of Fort Myers Beach, will be submitted for review at the time of the application for development order.

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PINK SHELL RESORT • CONCEPTUAL LANDSCAPE PLAN

Fort Myers Beach, FL
 11/11/2024
 # 24007635









Exhibit B

Pink Shell CPD Schedule of Uses and Site Development Regulations

1. **SCHEDULE OF USES:** The approved schedule of uses for this CPD is limited to the following:

a. RESIDENTIAL

Principal:

- Dwelling unit, single-family (guest rental only)
- Dwelling unit, multi-family
- Timeshare units (fractional ownership, vacation club)
- Group Quarters
- Sales center/office

Accessory:

- Essential services
- Essential service equipment
- Parking, surface/under building
- Recreation, private on-site and private, off-site
- Residential accessory uses

b. LODGING

Principal:

- Hotel/motel
- Hotel/condo
- Timeshare units (fractional ownership, vacation club)
- Resort
- Rental of any permitted dwelling unit for periods of one day or longer
- Recreational facilities – commercial and private on-site, off-site

Accessory:

- Mini bars (in the hotel rooms)
- Parking: Surface/under building
- Rental of beach furniture and cabanas
- Rental of boats, bicycles, electric scooters, e-bikes and golf carts
- Charter and tour boats
- Personal watercraft operations office
- Parasailing operations office
- Sailing office
- Docks for use by water taxi or water shuttle
- Meeting space
- Conference center
- Business center
- Kids camp and crafts
- Signs
- Sales center/office

- Subordinate commercial uses
- c. RETAIL
- Principal:
- Recreational facilities - commercial. in conjunction with a membership
 - Commercial uses including restaurant, café, personal services, retail store
 - Rental of bicycles, electric scooters, e-bikes and golf carts
 - Bait and Tackle Shop
- Accessory:
- ATM
 - On-premises and package sale for off-premises consumption of alcoholic beverage
- d. OFFICE
- Principal:
- Administrative offices
- Accessory:
- Home occupation (no outside help)
 - Commercial accessory use
- e. MARINE
- Principal:
- Administrative
 - Bait and Tackle Shop
- Accessory:
- Dock (for lease to non-occupants of the principal use)
 - Dock (for use by resort occupants)
 - Liveaboard vessel mooring slips (in compliance with submerged land lease)
 - Bathrooms, showers and laundry facilities
- f. CIVIC
- Principal:
- Public beach access
 - Park, neighborhood
 - Essential services and essential service equipment
 - Licensed fishing pier
- g. COMMERCIAL PARKING
- Principal:
- Public parking, surface/underbuilding

2. **PROPERTY DEVELOPMENT REGULATIONS:** The approved property development regulations for this CPD will take precedence over and supersede the property development regulations in the Town of Fort Myers Beach LDC that would otherwise apply:

Maximum Floor Area Ratio (FAR):	1.2
Maximum Intensity:	239 guest units
<ul style="list-style-type: none"> • Short-term rental 	<ul style="list-style-type: none"> • 2 guest units
<ul style="list-style-type: none"> • Lodging/Hotel/Hotel-Condo 	<ul style="list-style-type: none"> • 237 rooms
Maximum Commercial Intensity:	7,500 square feet total
<ul style="list-style-type: none"> • Administrative 	<ul style="list-style-type: none"> • 2,500 square feet
<ul style="list-style-type: none"> • Retail 	<ul style="list-style-type: none"> • 5,000 square feet
Parking:	417 spaces

Exhibit C

Conditions of Approval for Ordinance 24-35

1. The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment.
2. All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of 12/13/2024 attached as Exhibit A.
3. The approved uses are limited to those detailed on the attached Exhibit B, Schedule of Uses.
4. Architectural design of the bayside Boutique Hotel shall be substantially in compliance with Exhibit A, renderings.
5. Redevelopment and future uses on the subject property must be consistent with the attached Master Concept Plan as approved by the Town Council as part of this request. All prior Master Concept Plans, CPD zoning approvals, special conditions, and development agreements for the subject property are no longer valid if found to be in conflict with the terms and conditions of this ordinance.
6. The applicant must provide a landscaping plan and planting schedule that is in compliance with the approved MCP or the LDC Chapter 10, Division 6 Open Space, Buffering and Landscaping.
7. **PUBLIC BENEFITS:** The applicant commits to construct and manage the public features, special benefits and amenities identified below, subject to any required approval by permitting agencies, including the Town. The following items must be completed no later than the date of the first Certificate of Occupancy for the 40-unit boutique hotel, unless otherwise specified:
 - a. According to the conceptual landscape plan attached as part of Exhibit A, the property owner commits to create a six-foot wide (6') scenic and interpretive walkway and boardwalk along Mantanzas Pass and greenspace areas with park-like features. The plan redevelops and enhances the previously established public walkways, identified in the original covenant, located at north and south end of the bayside Dock Master building and Marina parcel as shown on the MCP. The property owner agrees to maintain the walkway, boardwalk and greenspace as described in perpetuity at no cost to the Town.

The property owner will deliver an easement for public access that is dedicated to the Town of Fort Myers Beach for use by the public of the public walkway and boardwalk, that is to include the following limitations as per the original easement and agreement:

- 1) The hours of use of the walkway and boardwalk shall be from dawn to sunset daily; and
- 2) The easement shall be non-exclusive. Without limitation, the property owner retains and reserves and shall continue to enjoy use of the walkway and boardwalk for any and all purposes which do not interfere with and prevent the permitted use as a public walkway and boardwalk conveyed by the easement, including without limitation the property owner's right to

Exhibit C

maintain, repair and construct and use the surface of the walkway and boardwalk for any purpose which does not materially and unreasonably interfere with the public's use of the walkway and boardwalk.

To the extent any part of the Walkway or Boardwalk is over any dock or boat ramp over the waters of the State of Florida, the property owner grants a license over the existing dock or boat ramp described and incorporated by reference to the public which is subject to the property owner's rights under applicable permit(s) issued by the State of Florida with respect to any such dock or boat ramp. Should the State of Florida withdraw or modify the Permit or Its permission in a manner that prevents or materially interferes with the use as a public walkway or boardwalk of any portion of the walkway and boardwalk over such dock or boat ramp, the property owner is authorized to substitute a six-foot wide (6') dedicated walkway on the upland portion of the Bayside Parcel adjacent to the waters of the State of Florida. Any such relocated Walkway may be located wholly or partially under the second story or overhang of any building located on the Bayside Parcel, to the extent reasonably necessary under the circumstances.

- b. Landscaping improvements to Estero Boulevard for the length of the CPD according to the conceptual landscape plan maintained in perpetuity by the property owner at no cost to the Town. Maintenance includes replanting from any storm damage. Landscaping improvements on the Gulf side of Estero Boulevard adjacent to the CPD shall be completed by December 31, 2025. Landscaping improvements on the Bay-side of Estero Boulevard adjacent to the CPD shall be completed concurrently with or prior to the issuance of a certificate of occupancy for the boutique hotel.
- c. The Town shall have the ability to pump out its vessel at the property up to 2 times per week, unless otherwise agreed to in writing between the Town and the property owner.
- d. The property owner has provided an easement in favor of the Town for stormwater storage and flood control under surface parking on the Bayside per Instrument No 2009000092549 the Public Records of Lee County, Florida.
- e. The property owner shall provide employee transportation through the FDOT/Lee Tran - Commute Connect Program, as long as the program exists.
- f. The property owner shall provide bicycles and golf carts for guest use to improve transportation and circulation, as may be available from time to time so long as the property owner acts in good faith to provide such amenities as reasonably available.
- g. The property owner shall provide a drop off/pick up slip for public use at no cost to the Town for the use of any water taxi/ferry.
- h. The property owner shall provide guests with information regarding alternate transportation options such as airport shuttles, bikes and road-ready golf carts with charging station, before arrival.
- i. The property owner shall offer its pool for the Bay Oaks summer camp while the Bay Oaks pool is being reconstructed due to Hurricane Ian at no cost to the Town.
- j. The property owner shall offer community day passes to pool amenities to residents.
- k. Property owner shall continue participation in the Florida Green Lodging Program, 4

Exhibit C

Palm Certification, through FDEP for all buildings within the CPD boundary.

- l. The property owner shall comply with all applicable state and locals regulations regarding lighting to preserve and protect nesting sea turtles..
8. All vehicles of guests or employees must be parked completely within the property lines of this CPD property.
9. A dune restoration plan must be submitted to the Town of Fort Myers Beach, for approval and will be subject to the following conditions:
 - a. Location of the restoration area will be generally as shown on the MCP in Exhibit A.
 - b. Plant species will consist of a mix of sea oats, beach panic grass, railroad vine, cocoplum, seagrapes and beach sunflower in lines planted at 1.5 feet on center.
 - c. To allow the plants to become established, the vegetation will be temporarily fenced with ropes and bollards or a similar fencing. Orange construction fence is prohibited.
 - d. No more than the existing dune walkover will be permitted to provide beach access.
 - e. The beach vegetation project will be coordinated with and integrated with any ongoing beach restoration or renourishing project that is underway at the time of development.
 - f. The dune plan must identify the location, behind the dune line, for chickee huts, beach furniture and rental equipment (personal watercraft, chairs etc.) as required by the Town's Sea Turtle Ordinance found in Section 32, Article V, Section 32-113.
10. (Condition 7 of Resolution 10-06, amended as follows) Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips and 39 live aboards currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.
11. (Condition 6 of Resolution 10-05, amended as follows) Any lawfully existing dwelling unit, guest unit, or timeshare unit within the subject property may be used as group quarters for employee housing without regard for the occupancy time limitations applicable to guests as set forth in LDC Section 34-1801(b)(4). Occupancy of group quarters is limited solely to bona

Exhibit C

vide employees of the Pink Shell Resort, including the businesses lawfully operating on the subject property in compliance with this zoning ordinance and all other applicable regulations. Under no circumstances may occupancy of any dwelling unit, guest unit, or timeshare unit exceed the lawful occupancy established by applicable building, fire, and life-safety codes. If no building, fire, or life-safety code provisions are more restrictive, the number of occupants of any individual living unit used for group quarters must not exceed four adults, or one family, whichever is larger. The term "family" is defined in LDC Section 34-2, as may be amended from time to time.

12. (Conditions 3 and 5 of Resolution 13-23, amended as follows) The total number of commercial memberships of recreational amenities is not to exceed 350. Commercial memberships are allowed for use of resort accessory uses, subordinate commercial uses including food and beverage services, fitness facility, pools, beach access and docks.
13. Construction staging shall be authorized when in compliance with all applicable Town codes, except that concrete delivery/pumping for the building's foundations and terrace may occur no earlier than 5:00 am and be in compliance with the Town's noise ordinance. No other approvals are inferred from approval of the CPD. The property owner shall be responsible for submittal of any requests for additional staging or construction management approvals from the Town Council.
14. Development of this project must comply with all requirements of the Town of Fort Myers Beach LDC at the time of the development order, except as may be granted by deviation as part of this planned development. If changes to this approval are requested, they will be reviewed as requests to formally modify this CPD.
15. Any violation of the CPD conditions of approval or deviation, as determined by a court of competent jurisdiction or through a properly noticed code enforcement proceeding, shall constitute a maximum \$250 per day civil violation.
16. No additional development may occur beyond that which is approved by this CPD without prior approval of the Town Council. The intent of this condition is to require that any future changes to this CPD must comply with the Town of Fort Myers Beach Comprehensive Plan and LDC in effect at the time of any future application.

	Document	Date	What it Does	Property Description	Notes
LEE COUNTY					
1	Resolution Z-82-170	6/21/1982	Rezoning from RM-2 to PUD as shown on the PUD plan with the removal of the cul-de-sac and parking area and to continue the bike path for a total of \$6,000 donation towards construction together with the following conditions: 1. 17.1 du/acre for a total of 182 units 2. Phased over a minimum of 10 years 3. Maximum height of 6 stories over parking 4. Construction of .25 mile/1350 feet of bike path 5. 3 beach access points, public and semi-public 6. \$8,100 contribution towards curbing or widening of Estero 7. Streetscaping plan 8. 6 additional parking spaces for condominium owners at the end of the resort property	<p><u>Phase I</u> - Lots 29 and 30, Unit No. 4, Island Shores (PB 9, PG 37)</p> <p><u>Phase II</u> - The northwesterly 6.5 feet of Lot 40 and Lots 41 & 42 Island Shores Club Section and Lots 38 & 39, Block "D", Island Shores Club Section (PB 9, PG 41).</p> <p><u>Phase III</u> - The westerly 25 feet of Lot 33 and all of Lots 34 through 36, Island Shores Unit 4, together with Lots 2 through 4 & Lots 8 through 10, Gulf Shore, (PB 9 PG 88).</p> <p><u>Phase IV</u> - Lot 40 less Northwesterly 6.5 feet and all of Lot 39, Island Shores Club Section.</p> <p><u>Phase V</u> - The west 1/2 of Lot 29 and all of Lots 30 through 32, Block "D", Island Shores Unit 4, together with Lots 33 & 34 Block "D", Island Shores Club Section.</p>	
2	Resolution ZAB-83-353	11/14/1983	Approval of Final PUD Site Plan for Phase 1 (Island Shores per AA PUD-91-010) - 42 units	Phase I (identified as 394 Estero Boulevard)	
3	Resolutions ZAB-84-196(A) and ZAB-84-196	04/25/1988 and 11/19/1984	Approval of Final PUD Site Plan for Phases II through V with conditions (A) corrects scrivener's error	Phase II, III, IV, and V	
4	Resolution Z-87-076	5/11/1987	Temporary (5 year) approval of consumption on premises, restricted to Pink Shell residents and their guests, limited to 350 sq. ft. recreation room of existing office and model center building located in Phase V until restaurant and minimarket are constructed, at which time the COP can be transferred	Phase V LESS Lots 33 & 34 Block "D", Island Shores Club Section	

PINK SHELL RESORT MARINA CPD HISTORIC ZONING RESOLUTIONS SUMMARY

5	Administrative Approval Amendment PUD-91-010(A) and PUD-91-010	1/29/1992 and 11/15/1991	<p>Administrative amendment approving/confirming the following:</p> <ol style="list-style-type: none"> 1. Total of 147 units (excluding Phase I and including 7 motel units in Phase V) 2. 42 unit, 6-story (over parking) building in Phase III. 3. Parking deviations for approved building <u>only</u> 4. Conversion of quadraplex (112, 113, 114, and 115) to duplex, with two units being transferred to new building 5. Removal of 6 units (102, 103, 104, 106, 107, and 108) to be transferred to new building 6. Transfer of 7 motel units in Phase V, but for use as administrative offices only 	Phase I, Phase II, Phase III, Phase IV, and Phase V LESS Lots 33 & 34 Block "D", Island Shores Club Section	<p>Phase I (42 dwelling units) has been sold and is no longer part of the Pink Shell Resort. Any future development SHALL NOT INCLUDE that portion of the PUD.</p> <p>WHEREAS clauses refer to 2 administrative approvals with no resolution number.</p>
6	Administrative Approval Amendment PUD-93-014A and PUD-93-014	7/9/1993	<p>Relocation of swimming pool and spa previously approved to be located in Phases II and IV to Phase III</p> <p>Confirmation of the following:</p> <ol style="list-style-type: none"> 1. Parking requirement for residential/hotel/motel units = 1.5/unit 2. Setback between proposed building in Phase III and any other building = 25' 3. Required 5' buffer at south end of property in Phase III 	Phase II, III, IV, and V and Lots 5 & 6, Gulfshore	Missing second page of original amendment
7	Z-93-057	10/4/1993	<p>Amends PUD site plan and the following:</p> <ol style="list-style-type: none"> 1. Maximum height of 42 unit Phase III building increased from 6 to 7 stories with minimum 42' street setback (deviation from 47') from Gulf Shore Court 2. Remaining 6 motel units to be converted to administrative office use 3. Existing quadraplex (112, 113, 114, and 115) to be converted to duplex 4. 7 (instead of previous 6) cottages/units (106-109 and 118-120) to be removed 	STRAP Number 24-46-23-07-00000.0350 All of Lots 2, 3, 4 and 8, Gulfshore Lot 33 LESS the Easterly 100 feet thereof and Lot 34 LESS the Northerly 50 feet thereof and the Easterly 100 feet thereof, Island Shores, Unit 4	
8	Z-95-017	11/6/1995	Approval of rezoning from RM-2 and PUD to CPD including creation of 59 hotel/motel units	<p>STRAP Number 24-46-23-07-00000.0350 (portion) and 24-46-23-08-0000D.0370</p> <p>NW 1/2 of Lots 29 through 32, Block "D", Island Shores Unit 4 (this appears to be a typo and the NW 1/2 should only apply to Lot 29)</p> <p>Lots 33 through 36 and Lots 37 through 39, Block "D", Island Shores Club Section</p>	

PINK SHELL RESORT MARINA CPD HISTORIC ZONING RESOLUTIONS SUMMARY

9	PUD-95-041	12/22/1995	Removal of Bayside portion of project rezoned to CPD by Z-95-017; applies to Gulfside PUD	Phase I, II, III, IV, and Vminus Bayside property as described in Z-95-017	Bayside property rezoned to CPD and removed from PUD
10	PUD-98-029	8/4/1998	Clarification amendment following partial acquisition by Boykin - 144 units built, leaving 15 to be constructed <u>Island Shores Condominium</u> - Phase I, 42 units (no longer a part of PUD) <u>Sanibel View</u> - Lots 39 through 42, Island Shores Club Section, 60 units (5 story over parking) <u>Esteros Island Beach Villas</u> - Lots 2 through 4 and Lots 8 through 10, Gulfshore together with a portion of the westerly 25 feet of Lot 33 and part of Lot 34, Unit 4 Island Shores; 42 units (7 story over parking) <u>Cottage Units</u> - Remaining portion of Lots 34 through 36 and westerly 25 feet of Lot 33, Unit 4 Island shores; 30 units <u>Duplexes</u> - Lots 9 and 10, Gulfshore; 2 duplexes/4 units total Single Cottage/Duplex Cottage - Lots 5 and 6 Gulfshore NOT PART OF PUD (per ordinance) NEW APPROVAL: Deletion of 2 5-story buildings, allowing for construction of 6-story over parking building with 45 units, the first 15 of which are already permitted and additional 30 only with removal of existing cottages on 1-to-1 basis; proposed pool and 63 parking spaces; recognized existence of existing swimming pool, 4 existin	Lots 2, 3, 4, 5, 6, 8, 9 and 10, Gulfshore Lots 34, 35 and 36 and Northwesterly 25 feet of Lot 33, Unit No. 4 Island Shores Lots 39, 40, 41 and 42, Island Shores Club Section LESS AND EXEPT legal description New building and improvements mentioned under "NEW APPROVAL" to be built on remaining portion of Lots 34 through 36 and the westerly 25 feet of Lot 33, Unit 4 Island Shores, and Lots 9 and 10, Gulfshore	
TOWN OF FORT MYERS BEACH					
11	Resolution 99-7	2/22/1999	Amend CPD (Bayside) to reduce permitted hotel units from 12 to 5, allowing only 52 units on the Bayside	STRAP Number 24-46-23-W1-0080D.0370	
12	Resolution 99-8	2/22/1999	Amend CPD to permit 7 additional units within existing 2 unit, 7 story Hotel Casa Playa - Abaco Beach CPD	STRAP Number 24-46-23-W1-0060D.020A	Transfers 7 units taken from Pink Shell Bayside to different project (Casa Playa)

PINK SHELL RESORT MARINA CPD HISTROIC ZONING RESOLUTIONS SUMMARY

13	Resolution 00-07A and Resolution 00-07	1/10/2000 and 06/29/2000	Amend CPD (Bayside) to remove 47 units and amend PUD (Gulfside) to add 47 uits to a 45 unit building increasing the height from 6 stories over parking to 9 stories over recreation area and lobby/administration area	<p>STRAP Number 24-46-23-W1-0070.0350</p> <p>Lots 2, 3, 4, 5, 6, 8, 9, and 10, Gulfshore</p> <p>Lots 34, 35, and 36 and Northwesterly 25 feet of Lot 33, Unit 4 Island Shores</p> <p>Lots 29 thorough 32 and the Northwest 1/2 of Lot 28, Block D, Unit 4 Island Shores</p> <p>Lots 33-36, Block D, Island Shores Club Section</p> <p>Lot 29, Block D, Unit 4 Island Shores</p> <p>LESS AND EXEPT legal description</p>	
14	Resolution 01-21	6/25/2001	Amend with conditions to White Sands Villas portion of PUD to change the orientation of 9-story building, revise project units from 77 units at 1000 square feet each, and from the approved 15 units at 550 square feet each, to allow 46 2-bedroom units at 1246 square feet each and 46 1-bedroom units at 761 square feet each, and allow shell parking lot	Same as Resolution 00-07A	

PINK SHELL RESORT MARINA CPD HISTORIC ZONING RESOLUTIONS SUMMARY

15	Resolution 01-26	8/27/2001	Approval of rezoning of Captiva Villas from RM-2 to MPD with conditions to permit a maximum of 43 hotel units in 28,219 square feet, accessory uses, and 12,000 square feet of commercial uses (to be transferred from Bayside) with consumption on premises, not to exceed 7 stories over one ground floor of parking (hotel rooms on Floors 2-7)/83 feet in height above based flood elevation	STRAP Number 24-46-23-W1-0070.0350 (referred to as being 1.84 total acres) (nothing more provided)	12,000 square feet of commercial broken down as follows: 1,300 Administrative/Offices 6,000 Restaurant/Deli/Retail 2,500 Guest Services 2,200 Conference/Meeting/Limited Food & Beverage Service Only permitted uses on Bayside accessory parking and uses related to the operation of the boat slips and dockage; existing commercial building to be demolished
16	Administrative Amendment ADD2003-00160	4/5/2004	Amend CPD (Bayside) to eliminate 12,000 sqft of commercial uses transferred to Captiva Villas CPD	Lots 29 through 32 and the Northwest 1/2 of Lot 28, Block D, Unit 4 Island Shores Lots 33-36, Block D, Island Shores Club Section Lots 38 and 39, Block D, Island Shores Club Section (referred to as containing 2.12 acres)	Moves 12,000 square feet as required by Resolution 01-26
17	Resolution 10-05	1/19/2010			
18	Resolution 10-06	1/20/2010	Amend CPD (Bayside) with conditions to replace tennis courts on Lots 38 and 39, Block D, Island Shores Club Section with an accessory parking lot for employee parking only and trash compactor while allowing existing boat ramp to remain with rerouted pedestrian walkway	STRAP Number 24-46-23-W1-0070.0340, 24-46-23-W1-0070.0320, and 24-46-23-W1-0070.0290 NW 1/2 of Lots 29 through 32, Block "D", Island Shores Unit 4 (this appears to be a typo and the NW 1/2 should only apply to Lot 29) Lots 33 through 36 and Lots 38 through 39, Block "D", Island Shores Club Section	Legal description is the same as Z-95-017 except Lot 37 is excluded

PINK SHELL RESORT MARINA CPD HISTORIC ZONING RESOLUTIONS SUMMARY

19	Resolution 13-23	10/21/2013	Amend CPD with conditions to add "Recreation, Commercial with membership" to approved schedule of uses and allow the use of the parking areas on Lots 38 and 39 for parking for employees, guests, and members	STRAP Number 24-46-23-W1-0070.0320, 24-46-23-W1-0070.0330, 24-46-23-W1-0070.0290 and 24-46-23-W1-0070.037A Same as Resolution 00-07A LESS AND EXCEPT Sanibel View Villas and White Sand Villas	
20	Ordinance 23-04	3/6/2023	Amends CPD (<u>Bayside</u>) to remove restriction against liveaboards	200 and 275 Estero STRAP Number 24-46-23-W1-0070.0330, 24-46-23-W1-0070.0340, and 24-46-23-W1-0070.037A (nothing more provided)	Includes condition to clarify existing CPD ownership, addresses, and parcel IDs