

LPA RESOLUTION 25-14

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING WITH CONDITIONS VARIANCE APPLICATION 20250075 FOR THE PROPERTY LOCATED AT 5236 ESTERO BLVD., FORT MYERS BEACH (STRAP NUMBER 33-46-24-W1-00206.0280) FOR THE FOLLOWING 3 VARIANCES: 1) A VARIANCE OF 20 FEET TO ALLOW A FRONT SETBACK OF 5 FEET WHERE 25 FEET IS REQUIRED; 2) A VARIANCE OF 15.4% BUILDING COVERAGE TO ALLOW 55.4% BUILDING COVERAGE WHERE 40% ALLOWED; 3) A VARIANCE OF 6.3% IMPERVIOUS SURFACE AREA TO ALLOW 73.3% IMPERVIOUS SURFACE WHERE 67% IS THE MAXIMUM ALLOWED, FOR A SINGLE-FAMILY HOME; 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, The Neighborhood Company (Applicant) on behalf of owner Xheku LLC (Owner) is requesting the following 3 variances from the Land development Code (LDC) to construct a single-family home with a raised pool: 1) LDC Section 34-638(b)(1)(a) Building Setbacks for the RM zoning district to allow a 5-foot front street setback where a 25-foot setback is required; 2) LDC Section 34-644(b) Table 34-3 Building Coverage to allow a 55.4% building coverage where a 40% maximum building coverage is allowed; and 3) LDC Section 6-14 (a) Neighborhood Flooding to allow a maximum impervious lot are of 73.3% where 67% is the allowed maximum impervious surface.; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W1-00206.0280; and

WHEREAS, the Property is located in the "Mixed Residential" Future Land Use of the Comprehensive Plan and the "Residential Multifamily" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on August 12th, 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 6 to 0 by roll call vote to approve the requested variances with the following conditions:

- 1) Approval of these 3 variances does not 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 portion of the neighborhood flooding ordinance (LDC Sec. 6-14) that requires the property to be able to maintain 1.6 inches of rainfall on site. Compliance will be reviewed at the time of permitting,
- 3) The variance shall only apply to the structure as shown on the site plan attached as Exhibit B. Demolition or substantial damage to the structure shall render the variance to be null and void.

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. VAR20250075, with the conditions contained herein, received unanimous approval from eligible voting members of the LPA on August 12, 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 LPA member Douglas Eckmann and seconded by LPA member John McLean and upon being put to a vote, the result was as follows:

LPA Chair Cereceda	<u>Aye</u>
LPA Vice-Chair Plummer	<u>Absent</u>
LPA Member Boan	<u>Aye</u>
LPA Member Dunlap	<u>Aye</u>
LPA Member Eckmann	<u>Aye</u>
LPA Member McLean	<u>Aye</u>
LPA Member Sudduth	<u>Aye</u>

DULY PASSED AND ADOPTED THIS 12th day of August 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: 
Anita Cerecida (Aug 26, 2025 11:39:11 EDT)
Anita Cerecida, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: Nancy Stuparich
Nancy Stuparich (Aug 26, 2025 13:06:38 EDT)
Vose Law Firm, Town Attorney

By: Amy Baker
Amy Baker (Aug 29, 2025 11:09:51 EDT)
Amy Baker, Town Clerk

EXHIBIT A: Findings of Specific Variances
EXHIBIT B: Site Plan

This Resolution was filed in the Office of the Town Clerk on: Aug 29, 2025.

EXHIBIT A: Findings of Specific Variances

Variance Criteria Review per LDC Sec. 34-87

Variance 1: 1) LDC Section 34-638(b)(1)(a) Building Setbacks for the RM zoning district to allow a 20-foot front street setback where a 25-foot setback is required

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

Hurricane Ian's destruction and the location of the 1978 CCCL on the subject property have created exceptional circumstances. The requested variance will allow for a 20' reduction from the required 25' front setback that represents a de minimis variance to allow for the reasonable reconstruction of a residence. The requested front setback of 5' will provide adequate separation to allow vehicular access to the residence through the adjacent 10' private road easement. The new construction is designed for two parking spaces below the residence to accommodate the required parking for the site.

- b. *That the conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

Hurricane Ian and the size of the property do not result from the actions of the applicant. The 1978 CCCL, the 10' easement at the front of the site and the required front setback have limited the ability for the property to be developable in its entirety. The regulatory impediments have created a lot which is severely limited in developable area.

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

The requested variance is the minimum variance to relieve the applicant of the burden caused by the application of the 25' front setback requirement.

- d. *That the granting of the variance **will/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The proposed variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This variance will allow the redevelopment of a single-family residence on Fort Myers Beach which previously existed since 1952. It allows for a new, resilient structure which is FEMA compliant and landward of the 1978 CCCL.

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

No, the property's conditions, use and this request are unique to this site and are not so general or recurrent in nature as to mandate an amendment to the regulations in question. The variance process is adequate to address these circumstances and specific hardship.

Variance 2: LDC Section 34-644(b) Table 34-3 Building Coverage to allow a 55.4% building coverage where a 40% maximum building coverage is allowed

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

Hurricane Ian, the location of the 1978 CCCL and the limited development footprint resulting from regulations that were implemented subsequent to the original platting of the property, have created exceptional conditions and circumstances. Furthermore, the requested variance represents a de minimis departure from the established development

- b. *That 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 exceptional conditions and circumstances are not a result of the Applicant's actions. The size of the property has not been altered by the property owner, but the area allowed to be used in the 40% maximum building coverage calculation is limited through the establishment of the 1978 CCCL, the Future Land Use designations and the Land Development Code regulations which eliminates the ability to count property located within the "recreation" FLUM designation from the building coverage calculation. These regulations affect the ability to redevelop this property and severely limit the size of a structure that can be built under the 40% maximum building coverage.

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

The variance is the minimum variance which allows an adequately sized single-family beach residence to be rebuilt while meeting modern construction methods and today's regulatory standards.

- d. *That the granting of the variance **will/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The proposed variance will not be injurious to the neighborhood or detrimental to the public welfare. The variance will allow for the construction of a single-family residence compatible with the neighborhood and surrounding properties. Furthermore, the project will include drainage improvements that are intended to comply with the Town of Fort Myers Beach Code of Ordinances, specifically Sec. 6-14, ensuring no adverse impact on stormwater management on adjacent parcels.

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

The property's conditions, use and regulatory impact from the 1978 CCCL are unique to this property. The conditions and circumstances are not so general or recurrent in nature as to mandate an amendment to the regulations in question. The variance process is adequate to address these circumstances and specific hardship.

Variance 3: LDC Section 6-14 (a) Neighborhood Flooding to allow a maximum impervious lot are of 73.3% where 67% is the allowed maximum impervious surface

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

Hurricane Ian, the location of the 1978 CCCL and the limited development footprint resulting from regulations that were implemented subsequent to the original platting of the property, have created exceptional conditions and circumstances. Furthermore, the requested variance represents a de minimis departure from the established development

- b. *That 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 exceptional conditions and circumstances are not a result of the Applicant's actions. The size of the property has not been altered by the property owner, but the area allowed to be used in the 40% maximum building coverage calculation is limited through the establishment of the 1978 CCCL, the Future Land Use designations and the Land Development Code regulations which eliminates the ability to count property located within the "recreation" FLUM designation from the building coverage calculation. These regulations affect the ability to redevelop this property and severely limit the size of a structure that can be built under the 40% maximum building coverage.

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

The requested variance is for an increase of 6.3% (or 203 Sf) in the maximum impervious surface requirement. It is however important to remember that there are additional areas of pervious surface which are not allowed to be counted toward the overall calculation. The applicant has also included a stormwater management plan which complies with current regulations. The requested variance is the minimum variance to relieve the applicant of the burden caused by the current regulations.

- b. *That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

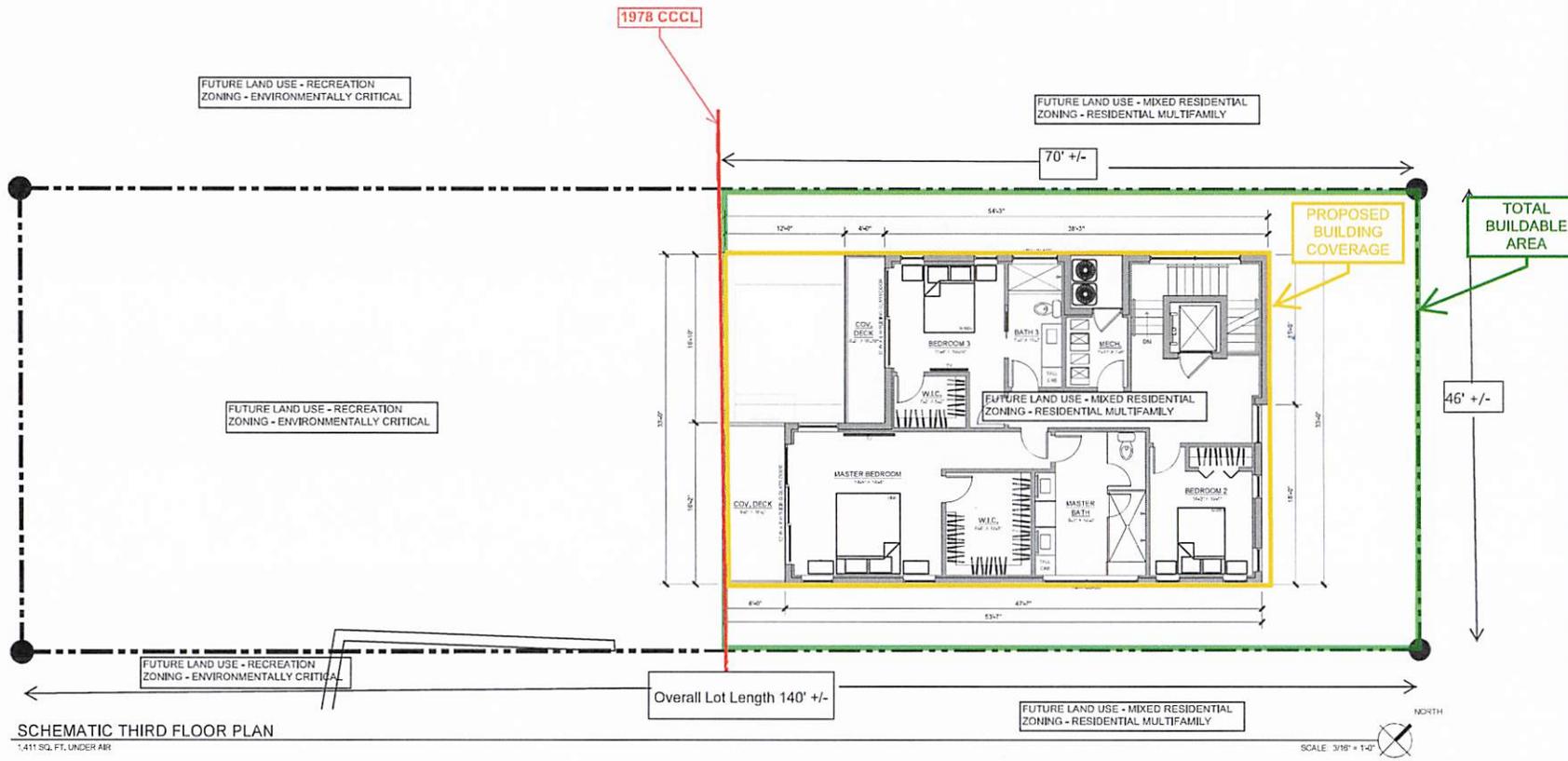
Any vehicular access easement is considered an impervious surface as the intent of the easement for vehicles to access abutting properties. This travel compacts the surface and greatly impedes water infiltration. The applicant has provided a Stormwater Management Plan that will be reviewed at the time of permitting. It is unlikely that the reduction will be injurious to the neighborhood or otherwise detrimental to the public welfare as the

applicant will be required to demonstrate that the drainage system will “maintain a one-inch (interior lot) or 1.6 inch (waterfront lot) rainfall on-site”.

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

The conditions of the subject property and its redevelopment as a single-family residence are specific to this site and are the reason for the requested variance. As such, the circumstances are not so general or recurrent a nature as to warrant amendment of the current regulations.

EXHIBIT DEPICTING
SITE PLAN - BUILDABLE AREA



SCHEMATIC THIRD FLOOR PLAN
1,411 SQ. FT. UNDER AIR

AREA ANALYSIS

FIRST FLOOR GARAGE/ENTRY ROYER FOOTPRINT	1778 S.F.
SECOND FLOOR LIVING AREA (UNDER AIR)	1250 S.F.
THIRD FLOOR LIVING AREA (UNDER AIR)	1412 S.F.
SECOND FLOOR REAR OUTSIDE DECK (INC. POOL)	528 S.F.
THIRD FLOOR REAR OUTSIDE DECK	164 S.F.
TOTAL AREA (UNDER AIR)	2692 S.F.

BUILDING COVERAGE ANALYSIS

Total Buildable Area	=	3,212 S.F.
Building Coverage Allowed 40%	=	1,284.8 S.F.
Proposed Building Coverage 55.4%	=	1,778 S.F.

This is a preliminary drawing and should not be used for construction. It is subject to change without notice. The architect shall not be responsible for the accuracy of the information provided by others. The architect shall not be responsible for the accuracy of the information provided by others. The architect shall not be responsible for the accuracy of the information provided by others.

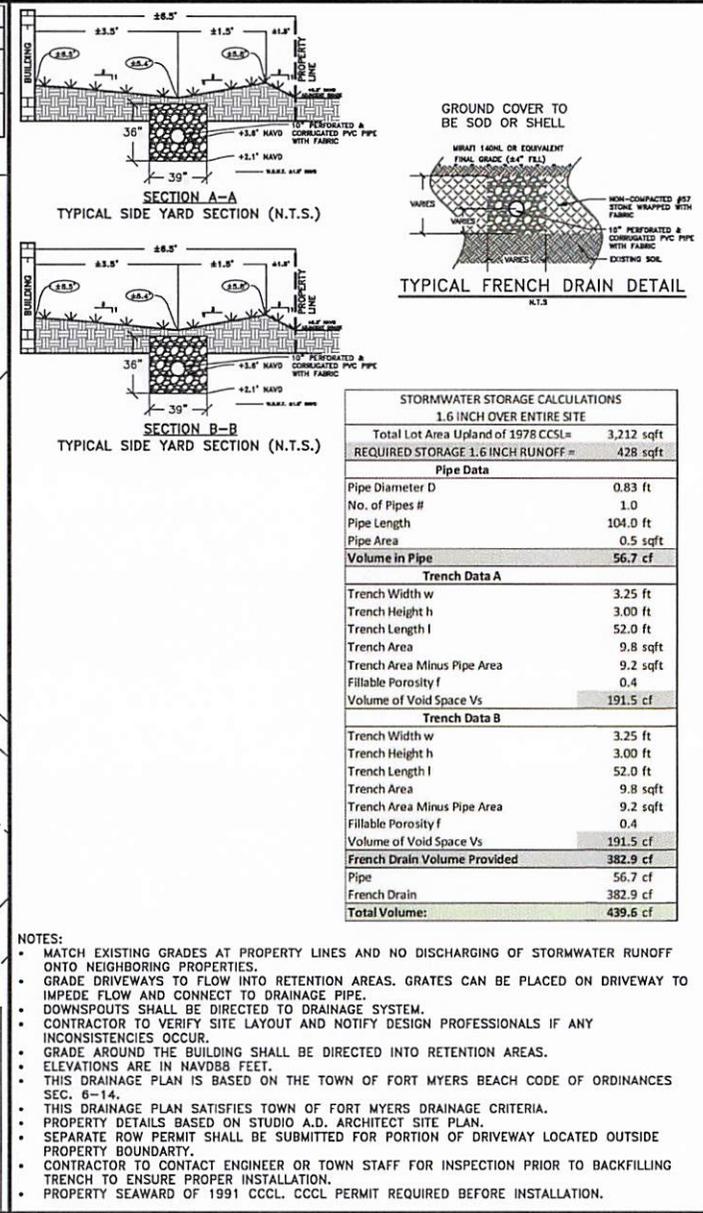
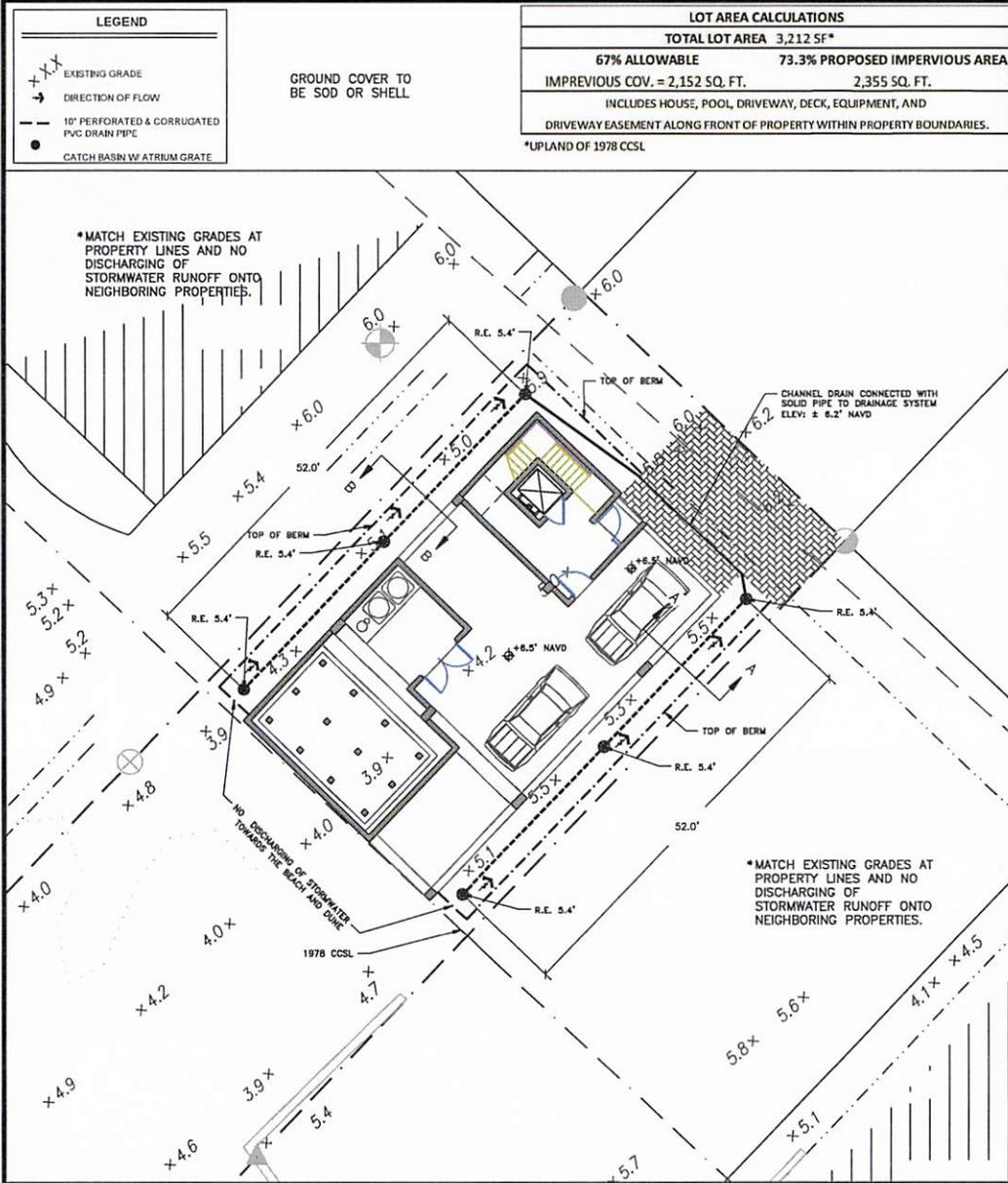
A SCHEMATIC DESIGN FOR:
THE HOBDAIRI RESIDENCE
5208 ESTERO BLVD.
FORT MYERS BEACH, FL

CONSULTANT
ALBERT CAMBRIDGE
AR25699

PRELIMINARY REVIEW SET
NOT FOR CONSTRUCTION

DATE ISSUED: 13 FEB 2025
REVISIONS:

SHEET
D3



GODDARD ENGINEERING, LLC
2931 8th Ave. NE
NAPLES, FL 34120
PH: (239) 776-2808
MGODDARDPE@GMAIL.COM

THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY

01/07/2025
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5236 ESTERO BLVD
PRIVATE RESIDENCE
STORMWATER MANAGEMENT PLAN

DATE: 7/09/25

REV.

REV.

JOB #: 25-187

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