

**ORDINANCE 25-15**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS AN APPLICATION TO REZONE PROPERTY LOCATED AT 138/140 DELMAR AVE, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W3-0100B.0150 FORT MYERS BEACH FROM RESIDENTIAL CONSERVATION TO RESIDENTIAL PLANNED DEVELOPMENT TO ALLOW CONSTRUCTION OF A TWO-STORY DUPLEX ABOVE FLOOD ELEVATION AND A DEVIATION FROM SECTION 34-638(D)(2) OF THE LAND DEVELOPMENT CODE TO ALLOW A PORCH AND STOOP TO ENCROACH 15-FEET INTO THE 25 FOOT STREET SETBACK WHERE A MAXIMUM ENCROACHMENT OF 10 FEET IS PERMITTED FOR ACCESSORY USES; PROVIDING FOR CLARIFICATION 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**, Scott and Leslie Fier (“Applicant”), owners of the property generally located at 138/140 Delmar Ave, Fort Myers Beach, identified as Strap Number 19-46-24-W3-0100B.0150 Fort Myers Beach (“Property”), filed an application to rezone the properties from Residential Conservation (RC) to Residential Planned Development (RPD) inclusive of a corresponding Schedule of Uses and Master Concept Plan (MCP) and a setback deviation from the Land Development Code (LDC); and

**WHEREAS**, the requested setback deviation is from LDC Section 34-638(d)(2), which will allow a porch and stoop to encroach 15-feet into the required 25-foot street setback, where a maximum encroachment of ten feet is permitted for accessory uses; and

**WHEREAS**, the subject property is located in the Mixed Residential Future Land Use of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the owners as listed in the public records of Lee County Property Appraiser; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on August 12, 2025, at which time 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, and the LPA voted 6 to 0 to recommend approval with conditions of the rezoning request; and

**WHEREAS**, on September 11, 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 was held on October 6, 2025. The public hearing was advertised in the Fort Myers News-Press on the 4th day of October 2025. A Business Impact Estimate was also posted on the Town's website on the 6<sup>th</sup> day of May 2025, which is 10 days prior to the second reading of the Ordinance.; and

**WHEREAS**, at the October 6, 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 Town Council found the request to rezone the property from Residential Conservation to an RPD with a corresponding Schedule of Uses and MCP and one (1) deviation for a street setback with the Town's Comprehensive Plan and Mixed Residential FLU; and

**WHEREAS**, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezoning as required by Sections 34-85 and 34-216 of the Land Development Code:

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. 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.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. 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.
- i. The rezoning, with the mitigating factors volunteered by the Applicant and 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 MCP and by other applicable regulations.
- n. All recommended 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 one requested deviation from "by-right" requirements as provided in Section 34-216 of the LDC:

- a. The deviation enhances 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. The deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. The deviation is consistent with the Fort Myers Beach Comprehensive Plan.

**NOW, THEREFORE, BE IT 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 finds the Applicant **did** meet its burden of proof that the requested rezoning **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 rezoning.

Section 3. Town Ordinance 25-15 is approved and adopted inclusive of the MCP, Schedule of Uses and Conditions of approval as contained in Exhibits A and B.

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 Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Mayor Allers, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 6<sup>th</sup> day of October 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

*Dan Allers*  
Dan Allers (Nov 5, 2025 19:59:52 EST)  
 \_\_\_\_\_  
 Dan Allers, Mayor

**ATTEST:**

*Amy Baker*  
Amy Baker (Nov 6, 2025 15:04:24 EST)  
 \_\_\_\_\_  
 Amy Baker, Town Clerk

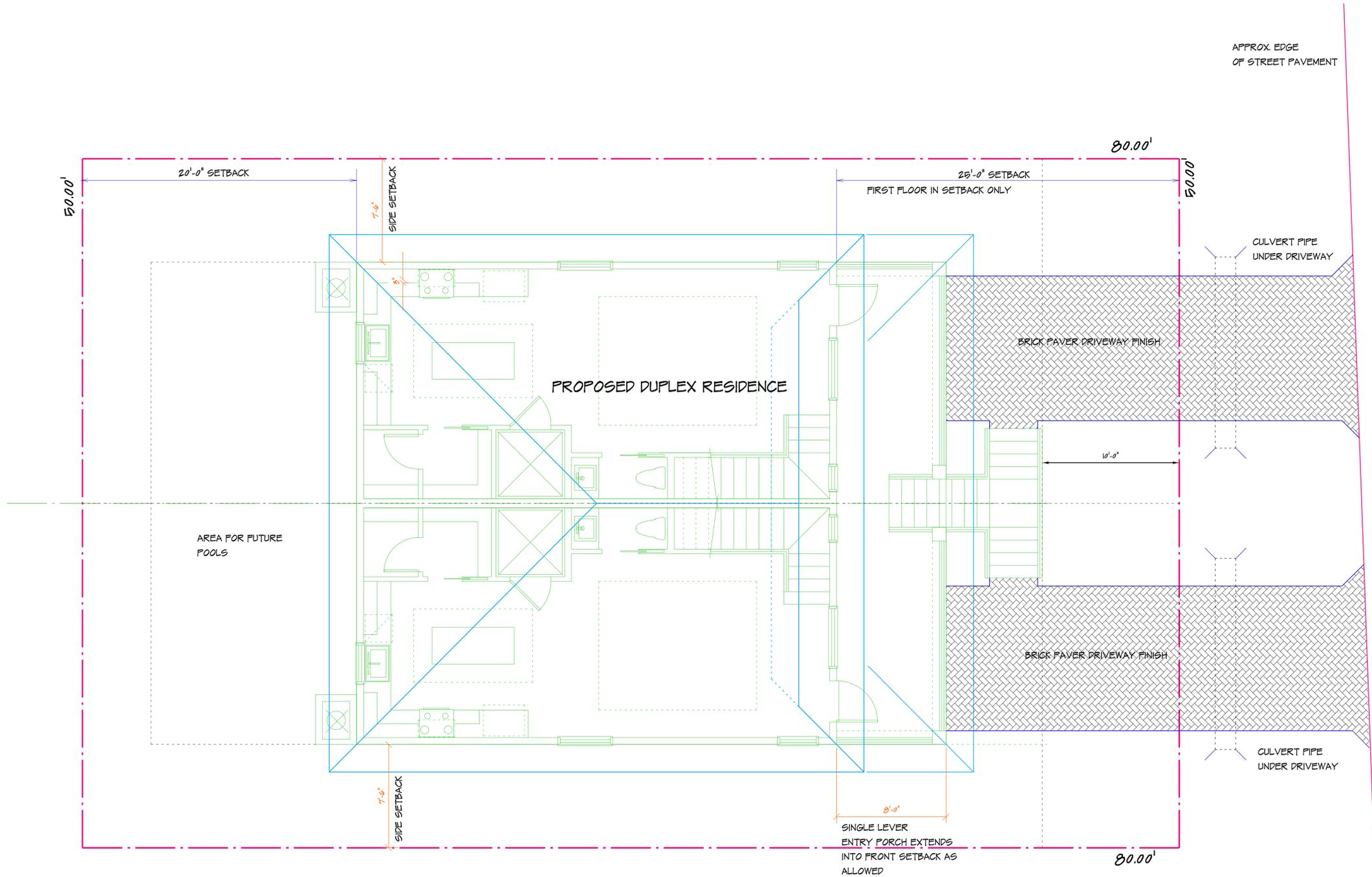
**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

*NBA*  
NBA (Nov 5, 2025 17:30:31 EST)  
 \_\_\_\_\_  
 Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on Nov 6, 2025.

Exhibits:

- Exhibit A: Master Concept Plan (MCP)
- Exhibit B: Conditions of Approval, Schedule of Uses and Deviations



SITE PLAN FOR DESIGN AND LOCATION ONLY. OWNER TO PROVIDE ENGINEERED SURVEYS AND DRAINAGE PLANS AS REQUIRED FOR PERMITTING.

OWNER SHALL PROVIDE APPROVER TOWN LOT USE SURVEY AS REQUIRED.

### SITE DESIGN PLAN

#### DEVELOPMENT CALCULATIONS

LOT AREA:.....4,000 SQ. FT.  
 40% AREA ALLOWABLE.....1,600 SQ.FT.  
 TOTAL HOME AREA.....1,505 SQ. FT.

FLOOD ZONE : AE-II

SCALE: 1/4" = 1'-0"

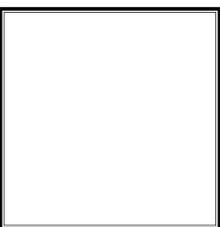
Revisions	

Job Number	
Date	12 - 12 - 24
Drawn By	J.C.
Checked By	
Drawing Scale	AS NOTED

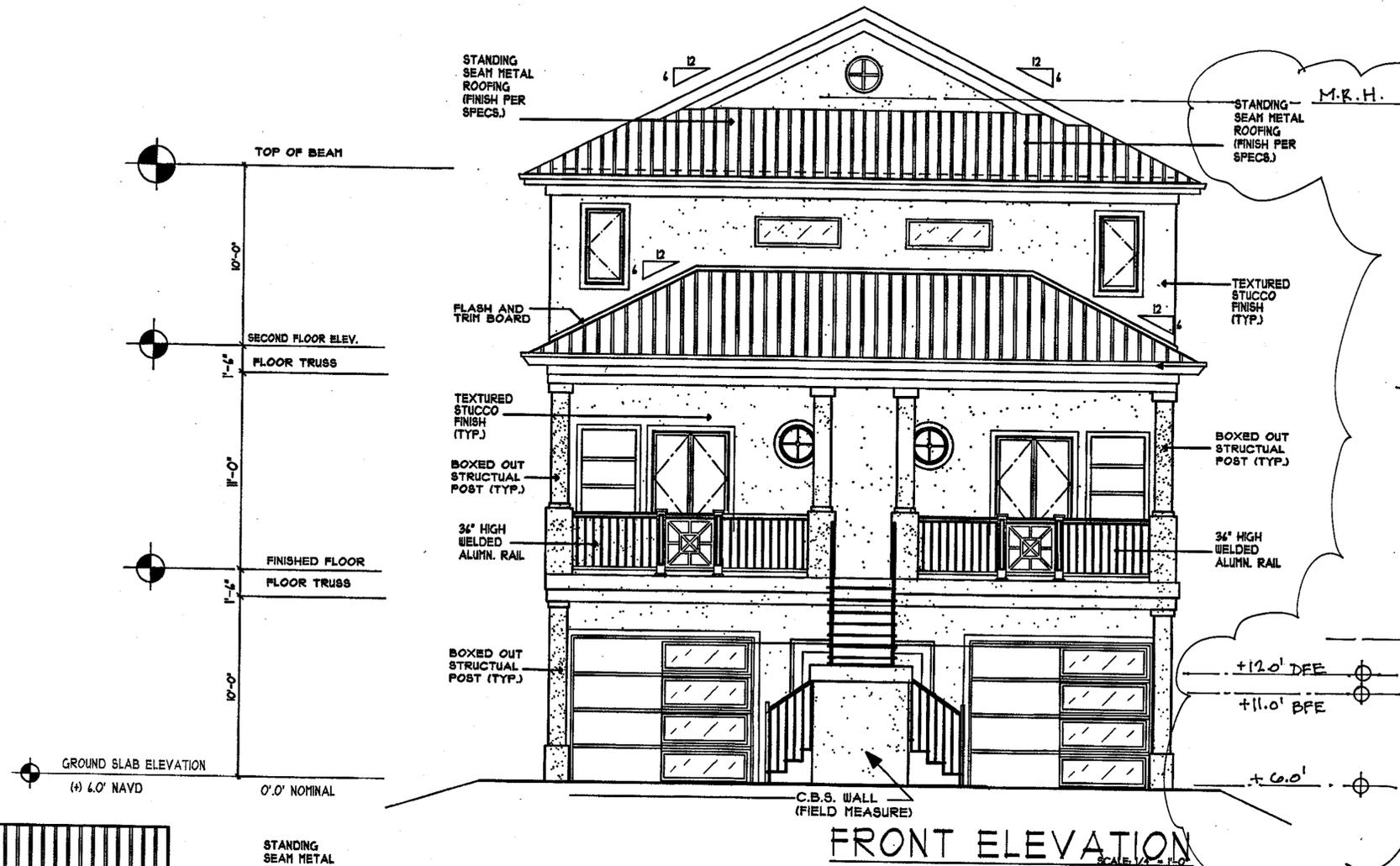
**STUDIO**

**one DESIGN**  
 CAPE CORAL  
 FLORIDA  
 (239) 707-9365

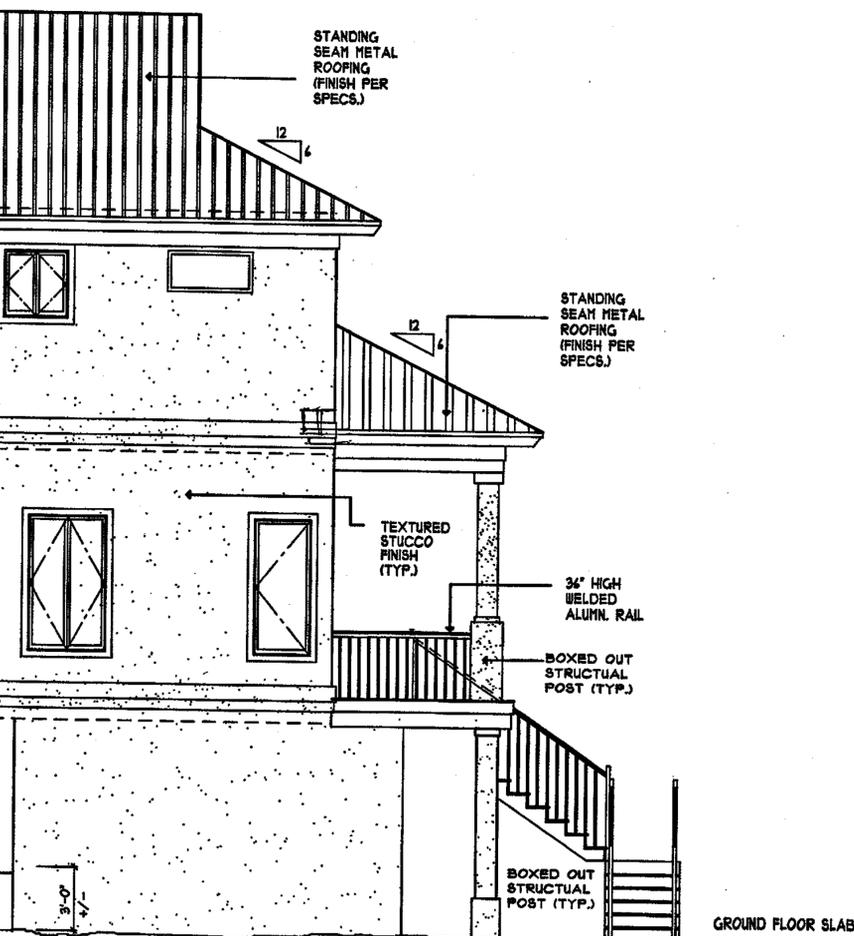
PROJECT: **FIER RESIDENCE**  
 DELMAR AVENUE  
 FT. MYERS, BEACH FLORIDA



SHEET  
**SP - 1**



FRONT ELEVATION  
SCALE 1/4" = 1'-0"



LEFT SIDE ELEVATION  
SCALE 1/4" = 1'-0"

Revisions	
1	6-30-25

Job Number	
Date	12-12-24
Drawn By	JC
Checked By	
Drawing Scale	AS NOTED

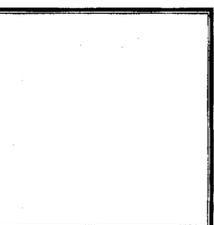
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**one**  
DESIGN

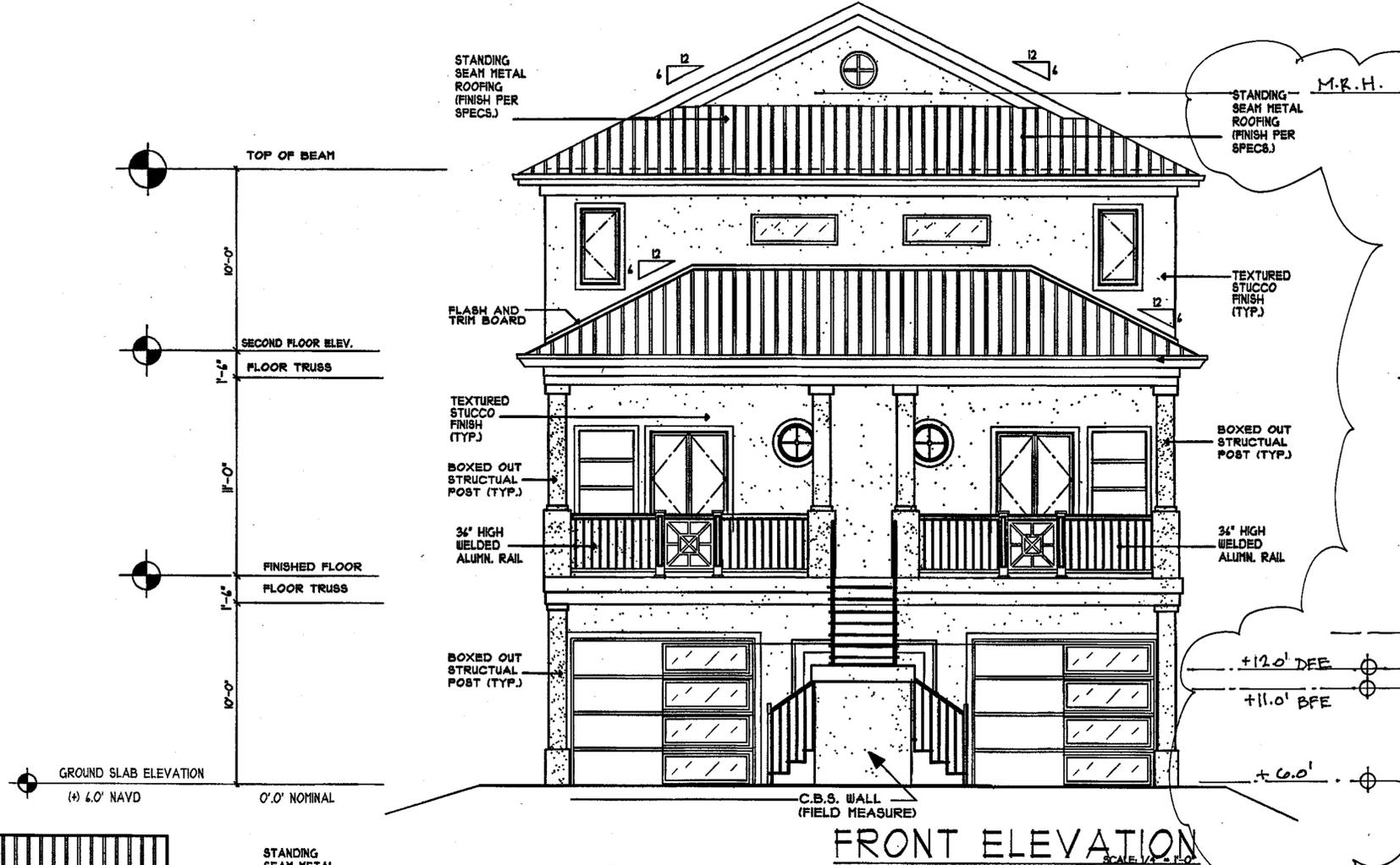
CAPE CORAL  
FLORIDA  
(239) 707-9365

PROJECT:

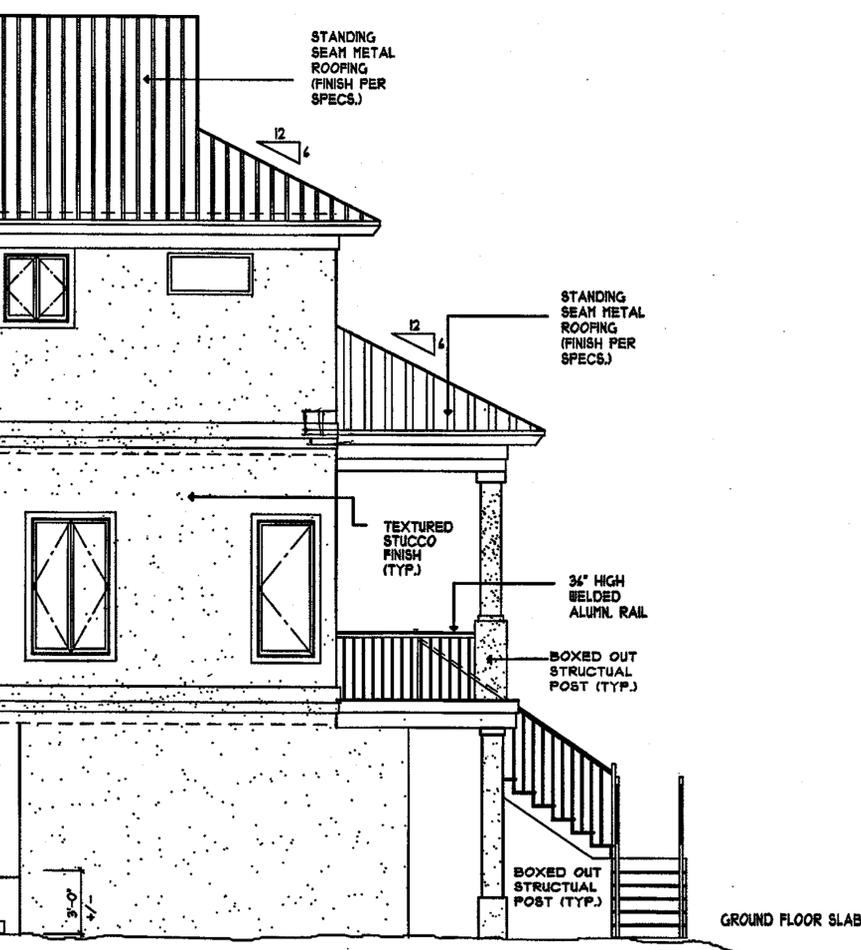
**FIER RESIDENCE**  
138 / 140 DELMAR AVENUE  
FT. MYERS, BEACH FLORIDA



SHEET  
**A-14**



**FRONT ELEVATION**  
SCALE: 1/4" = 1'-0"



**LEFT SIDE ELEVATION**  
SCALE: 1/4" = 1'-0"

Revisions	
1	6-30-25

Job Number	
Date	12-12-24
Drawn By	JG
Checked By	
Drawing Scale	AS NOTED

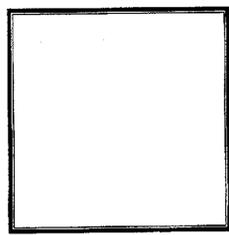
**STUDIO**

**one**  
**DESIGN**

CAPE CORAL  
FLORIDA  
(239) 707-9365

**PROJECT:**

**FIER RESIDENCE**  
138 / 140 DELMAR AVENUE  
FT. MYERS, BEACH FLORIDA



**SHEET**  
**A-14**

## **EXHIBIT B: CONDITIONS OF APPROVAL, SCHEDULE OF USES AND REQUESTED DEVIATIONS**

### **B.1 Conditions of Approval**

1. A site plan through the building permit process shall be required in lieu of a limited development order, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Failure to comply with any of the above-mentioned conditions of approval for the Rezoning request will render this approval null and void.

### **B.2 Schedule of Uses**

Two-family or duplex

### **B.3 Deviation**

1. Deviation from LDC Section 34-638(d)(2) b. to allow a porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted.