

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2013-018
REZ2013-0002 – Shipwreck Rezoning

WHEREAS, Beverly Grady, authorized agent for the owner of property located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard Fort Myers Beach, Florida has requested to rezone two parcels from Commercial Planned Development zoning to the DOWNTOWN zoning district; and

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

WHEREAS, the STRAP numbers for the subject property are 24-46-23-W3-00203.0020 and 24-46-23-W3-0050A.0080 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2013; and

WHEREAS, at the November LPA hearing the applicant requested and was granted a continuance of case REZ2013-0002 to a date certain of the January 14, 2014 LPA meeting; and

WHEREAS, a public hearing was held before the LPA on January 14, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-85.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The LPA recommends the Town Council **APPROVE/DENY** the request to rezone two parcels from Commercial Planned Development to the DOWNTOWN zoning district.

RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, Staff, and other interested parties at the hearing, and a review of the application and standards for conventional rezoning approval, the LPA recommends that Town Council make the following findings and reach the following conclusions:

- a. *Whether there exists an error or ambiguity which must be corrected.*

Staff does not find that any errors or ambiguity exist surrounding the subject property and its zoning category that require correction. **APPROVE/DENY**

- b. *Whether there exist changed or changing conditions which make approval of the request appropriate.*

The only changed condition that exists which supports the applicant's request for rezoning is the existence of the DOWNTOWN zoning district. At the time of the Rusty's CPD approval, the Town had not yet developed Town-specific zoning districts. Now that the DOWNTOWN district exists the applicant is requesting this rezoning.
APPROVE/DENY

- c. *The impact of a proposed change on the intent of Chapter 34 of the Fort Myers Beach Land Development Code.*

Staff does not anticipate that the proposed rezoning from CPD to DOWNTOWN will have any negative impact on the intent of Chapter 34. **APPROVE/DENY**

- g. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

As discussed in the analysis section of this report, the request is generally consistent with the goals, objectives, policies, and intent as well the densities, intensities and general uses of Comprehensive Plan. **APPROVE/DENY**

- h. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The applicant has not submitted a plan for redevelopment with this request for rezoning. They have indicated to Staff there is no immediate intention to redevelop any portion of the subject property, merely a desire to obtain DOWNTOWN zoning. The applicant is aware that by requesting this action they are losing all approvals to deviate from code requirements and any approval for density above and beyond code requirements. The Town retains land and property development controls, including but not limited to Section 34-671: DOWNTOWN zoning district regulations, Section 34-677: Commercial Design Standards; FEMA flood elevation and substantial improvement compliance, and other sections of the Land Development Code. Any redevelopment will be subject to reviews utilizing the applicable specific land use regulations. **APPROVE/DENY**

- i. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services including water, sewer, and electric are available at the subject property. Any redevelopment or increase in density or intensity at the subject property will necessitate a thorough stormwater management plan and review prior to any permit or use approvals. **APPROVE/DENY**

- j. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

As existing commercially zoned and developed lots located in the Downtown Core Area along Old San Carlos Boulevard, the subject property does not include any sensitive and/or environmentally critical lands. However, should these parcels be redeveloped with uses as permitted within the DOWNTOWN zoning district, all applicable environmental codes including but not limited to Sea Turtle lighting requirement as found in LDC Section 14-79 must be met. **APPROVE/DENY**

- k. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

With its central location within the Downtown Core Area, the subject property's proposed change from CPD to DOWNTOWN zoning is clearly compatible with existing and planned uses. The Town does, however, retain land and property development controls, including but not limited to Section 34-671: DOWNTOWN zoning district

regulations, Section 34-677: Commercial Design Standards; FEMA flood elevation and substantial improvement compliance, and other sections of the Land Development Code. Any redevelopment will be subject to reviews utilizing the applicable specific land use regulations. **APPROVE/DENY**

- l. Whether the location of the request places 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.*

As evidenced by recent requests for zoning changes, Town Council has determined that the appropriate time to study traffic impacts is at the time of redevelopment or development order. The applicant has indicated there are no current plans for redevelopment. The continuation of existing uses, therefore, will not increase any traffic burden on local streets or other local services or facilities.

Staff does not anticipate the requested rezoning from CPD to DOWNTOWN will generate any additional capacity or need for the Lee County School District or the Town's Parks and Recreation Department. **APPROVE/DENY**

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE/NAY	Joanne Shamp, Vice Chair	AYE/NAY
Al Durrett	AYE/NAY	John Kakatsch	AYE/NAY
Jane Plummer	AYE/NAY	Jim Steele	AYE/NAY
Chuck Bodenhafer	AYE/NAY		

DULY PASSED AND ADOPTED THIS **14th** day of **JANUARY, 2014**.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2013-019
SEZ2013-0006 – Shipwreck Special Exception

WHEREAS, Beverly Grady, authorized agent for the owner of property located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard Fort Myers Beach, Florida has requested a special exception to add 'Retail Store, large,' 'Wholesale,' and 'Parking lot, shared permanent' to the North parcel of the subject property and 'Parking lot, shared permanent' and 'Retail Store, large' to the South parcel of the subject property as permitted uses on the subject property; and

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

WHEREAS, the STRAP numbers for the subject property are 24-46-23-W3-00203.0020 and 24-46-23-W3-0050A.0080 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2013; and

WHEREAS, at the November LPA hearing the applicant requested and was granted a continuance of case SEZ2013-0006 to a date certain of the January 14, 2014 LPA meeting; and

WHEREAS, a public hearing was held before the LPA on January 14, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-88;

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The LPA recommends the Town Council **APPROVE/DENY** the request for a Special Exception to allow 'Retail Store, large,' 'Wholesale,' and 'Parking lot, shared permanent' for the North parcel of the subject property and 'Parking lot, shared permanent' and 'Retail Store, large' for the South parcel of the subject property as permitted uses.

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding approval of special exceptions, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **do/do not** exist that make the requested approval, as conditioned, appropriate;
2. The requested special exception, as conditioned, **is/is not** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;

3. The requested special exception, as conditioned, **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, **will/will not** be compatible with existing or planned uses and **will/ will not** cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, **will/will not** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE/NAY	Joanne Shamp, Vice Chair	AYE/NAY
Al Durrett	AYE/NAY	John Kakatsch	AYE/NAY
Jane Plummer	AYE/NAY	Jim Steele	AYE/NAY
Chuck Bodenhafer	AYE/NAY		

DULY PASSED AND ADOPTED THIS **14th** day of **JANUARY, 2014**.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2013-020
VAR2013-0007 – Shipwreck Variance

WHEREAS, Beverly Grady, authorized agent for the owner of property located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard Fort Myers Beach, Florida has requested the following variances from the following LDC sections:

1. Section 34-676(b) parking lot location, to permit off-street parking in the front and side yard as depicted on the site plan in *Exhibit E*
2. A variance from Table 10-8 from a Type D buffer for Old San Carlos and from Third Street to permit existing conditions
3. Section 34-676(c) parking lot location, to allow no rear yard connection between subject property and adjacent property
4. Section 34-677(b)(3) requiring a buffer between off street parking and a ROW to allow zero buffer
5. Section 10-416(d) requiring buffer between parking and ROW to allow zero buffer
6. A variance from Section 34-622 (b) and 34-3131 from visibility triangle to allow reduced visibility triangle for access to Third Street pursuant to sketch as a result of Town approval of SOB structure in right of way
7. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'
8. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2 (a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2 (d) no landscape every 10 space requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass and 2 (g) no tree grates; and

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

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-00203.0020 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2013; and

WHEREAS, at the November LPA hearing the applicant requested and was granted a continuance of case VAR2013-0007 to a date certain of the January 14, 2014 LPA meeting; and

WHEREAS, a public hearing was held before the LPA on January 14, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-87;

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The LPA recommends the Town Council **APPROVE/DENY** the requested variances from the following sections:

1. Section 34-676(b) parking lot location to permit off-street parking in the front and side yard as depicted on the site plan *Exhibit E*
2. Table 10-8, Type D buffer for Old San Carlos and from Third Street to permit existing conditions
3. Section 34-676(c) parking lot location to allow no rear yard connection between subject property and adjacent property
4. Section 34-677(b)(3) requiring a buffer between off street parking and a ROW to allow zero buffer
5. Section 10-416(d) requiring buffer between parking and ROW to allow zero buffer
6. Section 34-622 (b) and 34-313, visibility triangle, to allow reduced visibility triangle for access to Third Street pursuant to sketch as a result of Town approval of SOB structure in right of way
7. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'
8. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2 (a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2 (d) no landscape every 10 space requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass and 2 (g) no tree grates; and

RECOMMENDED CONDITIONS:

1. The applicant shall install a Type D buffer in compliance with the all provisions of Table 10-9 except that where the width is reduced from 15' to 5', the applicant shall nevertheless install the same number of plantings that would be required for the 15' buffer.
2. Applicant may utilize the parking dimensions described in variance request #6, however, at the time of redevelopment or the application of a building permit for the subject property, the parking space dimensions must be brought into compliance with all provisions of Section 34-2016.

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding approval of variance requests, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

- a. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is/is not** 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/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/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/are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE/NAY	Joanne Shamp, Vice Chair	AYE/NAY
Al Durrett	AYE/NAY	John Kakatsch	AYE/NAY
Jane Plummer	AYE/NAY	Jim Steele	AYE/NAY
Chuck Bodenhafer	AYE/NAY		

DULY PASSED AND ADOPTED THIS **14th** day of **JANUARY, 2014**.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

MEMORANDUM



To: Hank Zuba, Chair, Local Planning Agency

Local Planning Agency members

From: Leslie Dulmer, Zoning Coordinator

CC: Walter Fluegel, Community Development Director

Date: January 3, 2014

Re: 237 Old San Carlos Blvd - REZ2013-0002, SEZ2013-0006, VAR2013-0007

At the November 12, 2013 Local Planning Agency (LPA) meeting, the property owner and applicant for cases REZ2013-0002, SEZ2013-0006 and VAR2013-0007 for property located at 237 Old San Carlos Boulevard requested a continuance to a date certain of the January 14, 2013 LPA meeting. The purpose of the continuance request was to ensure that the application and submittals by the applicant were complete. LPA granted the request with the understanding that the applicant would provide any additional information to Staff in sufficient time to review same prior to the LPA meeting.

This memo will serve as Staff's review of any **NEW** requests and any **NEW** material submitted by the applicant after the last LPA meeting pertaining to the cases listed above. Staff has, however, also included a brief summary of the previous requests. Please refer to the packet materials from the November LPA meeting for the original submittal documents.

Please note, Staff received the attached documentation via email on December 16, 2013. There was no organization to the submittal and Staff has struggled in the very short period of time remaining (before packets were due to members) to understand the information supplied and what exactly the applicant is requesting. Staff has, therefore, attempted to ascertain what is being requested solely based on the documentation provided by the applicant. The pages following this memo are the documents as supplied by the applicant.

Please note: on January 6, 2014 Staff received via email a summarizing document from the applicant (attached immediately following this memo) and a hard copy in the mail on January 7, 2014. However, due to the lateness of submittal and LPA packet deadlines, Staff did not have time to revise the following memo.

REZ2013-0002

Original request

A request to rezone four parcels from the Commercial Planned Development zoning to the DOWNTOWN zoning district.

Additional request(s)

The applicant did not include any changes to this request.

Recommendation
Staff recommends **APPROVAL** of the requested rezoning from Commercial Planned Development (CPD) to DOWNTOWN.

SEZ2013-0006

Original request

A special exception to add to the North parcel the following uses:

1. Retail Store, large, as defined in LDC Chapter 34 as gross floor area larger than 5,000

square feet

2. Wholesale

To add to the South parcel the following uses:

1. Parking lot, shared and permanent, on the South parcel

2. Retail Store, large, on the South parcel as permitted uses on the subject property

Additional request

A special exception request for

3. Parking lot, shared and permanent, on the North Parcel

Staff Review

The applicant added this third special exception request to the North Parcel to permit permanent shared parking to the North Parcel, a commercial parking use that would otherwise become an existing non-conforming use on the subject property. As is evident by the extensive list of requests on the subject property, the property owner is attempting to limit the number of non-conforming uses on the subject property. The applicant provides little justification for the requested use other than the assertion that parking is an appropriate use.

The use of a permanent commercial parking lot is compatible and one that furthers the intent of the 'park once' philosophy of the DOWNTOWN Core Area. As evident by Staff's support of the request for parking on the South Parcel, Staff also supports the parking use on the North parcel (see *Exhibit D* for a site plan).

However, by rezoning from CPD to DOWNTOWN, the parking uses must comply with Section 34-676(b) which does not allow parking lots in front or side yards (see *Exhibit E*). In addition, Table 10-8 in Chapter 10 of the LDC requires a 15' Type D Buffer between all parking lots and rights-of-way.

Please note that, without the special exception, the proposed rezoning will render the parking lot nonconforming and thus, the need to include the requested special exception uses (addressed by the application for special exception, case SEZ2013-0006) and for location and buffers (addressed by application of a variance, case VAR2013-0007).

Recommendation

Staff recommends **APPROVAL** of a special exception

To add the following uses to the North parcel:

1. Retail Store, large, as defined in LDC Chapter 34 as gross floor area larger than 5,000 square feet

2. Wholesale
3. Parking lot, shared and permanent
- To add the following uses to the South parcel:
1. Parking lot, shared and permanent
2. Retail Store, large, on the South parcel as permitted uses on the subject property

VAR2013-0007

Original request

A variance request from:

1. Section 34-676(b), parking lot location to permit off-street parking in the front and side yard as depicted on the site plan *Exhibit E*
2. A variance from Table 10-8 from a Type D buffer for Old San Carlos and from Third Street to permit existing conditions

Additional requests

Additional variance requests from:

3. Section 34-676(c), parking lot location, to allow no rear yard connection between the subject property and the adjacent property
4. Section 34-677(b)(3), requiring a buffer between off street parking and a ROW to allow zero buffer
5. Section 10-416(d), requiring a buffer between parking and ROW to allow zero buffer
6. A variance from Section 34-622 (b) and 34-3131 from visibility triangle to allow reduced triangle for access to Third Street pursuant to sketch due to Town approval of SOB structure in right of way
7. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

8. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2 (a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2 (d) no landscape every 10 space requirement; 2(e) no median required ; 2(f) no interior landscape of sod and grass and 2 (g) no tree grates

Staff Review

In all the resubmittal information provided by the applicant there was a lack of narrative, justification, and documented analysis to establish that the request meets the criteria for granting variances found in Section 34-87. This lack of information added to Staff's difficulty in analyzing the requests and resulted in many of the final recommendations of 'denial.'

Staff supports the applicant's request for variance #3 because the adjacent property is fully developed and is unlikely to grant a cross access easement to the applicant.

It appears that the additional variances, numbered 4 and 5, are being requested essentially to allow the existing conditions of the subject properties (both North and South Parcels) to remain and not be rendered nonconforming by the act of rezoning the property from CPD to

DOWNTOWN. Upon initial review, it appears that granting the requests to maintain a status quo condition is a reasonable action. However, one must remember that variance approvals run with the land – meaning that any approvals granted to permit and allow for existing conditions will remain in effect at the time of redevelopment. Furthermore, the time of redevelopment is when the Town has its best opportunity to bring those properties into compliance with the Land Development Code and the Comprehensive Plan.

Staff does agree with the applicant, however, that the buffer size required (15' for a ROW buffer and 15') by these code sections could be considered excessive and inconsistent with the intent of a vibrant, mixed use downtown core area encouraged by the Comprehensive Plan. As stated in the Staff report that was written in preparation for the November LPA hearing, Staff understands that a 15' foot buffer on an existing site not currently under development order may prove to be a burdensome requirement. However, the code does encourage landscape buffers as a way to shield parking lots from view and the pedestrian experience (see also Section 34-2022(c)). Staff recommends that conditioning an approval to allow for a reduced size and scope of buffering would be a compromise equally agreeable to both the Town and the applicant. Therefore Staff suggests, as an alternative, that instead of a 15' wide buffer, the applicant will install a 5' buffer with the same number of shrubs and trees that is required for the 15' buffer. This would be consistent with buffer deviations approved at 2301 Estero and similar to the planting requirements from the Seasonal Parking lot provisions.

Variance request #6 is to allow relief from the visibility triangle requirements as set forth in Sec. 34-622(b) and Sec. 34-3131. The applicant refers to a sketch but none was attached to this submittal. Once again, no justification was submitted with this request, so Staff is unable to provide an analysis. Therefore Staff must recommend denial of the request.

Variance #7 is a request to allow parking space and parking aisle dimensions that are smaller and narrower than code allows. Currently Section 34-2016 defines a minimum parking space as 8.5'x18' or 8.5'x20' and parking aisles between 11' to 22' wide depending on the specific layout of the lot. Similar to the discussion regarding buffers in the previous paragraphs, Staff understands the desire of the property owner to have the existing conditions be considered compliant. The problem is that when the property is redeveloped, it will no longer have to comply with standards that neighboring properties have been held to, and for what reason? The applicant has not provided any justification for allowing a reduction in parking dimensions. Furthermore, an 8x16 parking space with a one-way drive aisle is a very narrow space to navigate and with the seasonal influx of drivers unfamiliar to the roads and parking lots of the island, Staff is concerned about the safety ramifications of supporting this request.

Staff would propose, as a compromise on this particular request, that the applicant utilize the dimensions laid out in request #7 until the time of redevelopment, at which time they would be required to install a new parking lot that meets buffer requirements and parking lot dimensions set forth in Sec. 34-2016.

While the applicant makes the argument that the LDC allows the Director to provide administrative relief from Section 10-416(c), he only has that authority in certain situations. The Director may only provide administrative relief as part of a development order submittal and only when the application of Section 10-416(c) would otherwise restrict the developer from meeting the required parking numbers. In this particular case, the applicant is requesting relief from these landscape requirements because, once again, they wish to retain status quo without

being considered existing non-conforming. Staff appreciates the need for parking in the Downtown zoning district, however, the applicant has not presented a compelling argument or narrative justification that meets the criteria for variance requests set forth in Section 34-87.

Recommendation

Staff recommends the following:

1. Section 34-676(b) parking lot location to permit off-street parking in the front and side yard as depicted on the site plan *Exhibit E* - **APPROVAL WITH CONDITIONS**

2. A variance from Table 10-8 from a Type D buffer for Old San Carlos and from Third Street to existing conditions - **DENIAL**

3. Section 34-676(c) parking lot location to allow no rear yard connection between subject property and adjacent property - **APPROVE**

4. Section 34-677(b)(3) requiring a buffer between off street parking and a ROW to allow zero buffer - **DENIAL**

5. Section 10-416(d) requiring buffer between parking and ROW to allow zero buffer - **DENIAL**

6. A variance from Section 34-622 (b) and 34-3131 from visibility triangle to allow reduced triangle for access to Third Street pursuant to sketch due to Town approval of SOB structure in right of way - **DENIAL**

7. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

APPROVAL WITH CONDITIONS

8. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2 (a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2 (d) no landscape every 10 space requirement; 2(e) no median required ; 2(f) no interior landscape of sod and grass and 2 (g) no tree grates - **DENIAL**

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bgready@ralaw.com
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January 6, 2014

Ms. Leslie Dulmer, Zoning Coordinator
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, Florida 33931
VIA E-MAIL (leslee@fortmyersbeachfl.gov)
AND REGULAR U. S. MAIL

RE: Rezoning 2013-0002; SEZ2013-0006; and Variances (formerly Shipwreck)

Dear Ms. Dulmer:

John W. Richard, Trustee has filed an application to rezone two (2) parcels on Old San Carlos Boulevard (237, 245, 309, 320 and 330) from Commercial Planned Development (CPD) to the Downtown Zoning District. In addition, we are requesting certain special exception uses as authorized by the Downtown Zoning District.

SPECIAL EXCEPTIONS:

- North Parcel:
1. Retail store, large, as defined in LDC Chapter 34 with floor area larger than 5,000 square feet
 2. Wholesale
 3. Parking lot, shared and permanent

- South Parcel:
1. Parking lot, shared and permanent
 2. Retail store, large, as defined in LDC Chapter 34 with floor area larger than 5,000 square feet

In preparing for the LPA hearing, Mr. Richard engaged the services of an architect and a professional engineer to review both Chapter 34 and Chapter 10 to request appropriate variances for the ongoing operation and for the future design consistent with the design criteria for Downtown and the Pedestrian Commercial Future Land Use Map Designation. In addition, we are requesting the following:

VARIANCES:

1. Section 34-676(b) and (c) parking lot to permit off-street parking in the front and side yard as depicted on the site plan reflecting the current

condition for the South parcel and as depicted on the site plan for future development of the South parcel and to allow no connection to the property south of the South parcel

2. A variance from Table 10-8, Section 34-677(b)(3) and Section 10-416(d) from the Type D buffer to a 2.5 foot buffer
3. A variance from LDC Section 10-416(c) internal landscaping requirements for parking lots to allow no internal landscape parking lots improvements
4. Variance from LDC Section 34-2016(1) and (2) for revised parking space and aisle dimensions that are consistent with the existing parking space and aisle dimensions on the South parcel
5. Variance from Section 34-622(a) and 34-3131 to eliminate visibility triangle on Third Street as reflected by the sketch.

In addition, there is a request pursuant to Section 34-674(a) to permit building overhang onto the right-of-way for dimension of 12 feet. This is not a variance from the regulation but a request pursuant to the regulation.

In support of the special exception for parking, "retail, large," and wholesale:

PARKING (North and South Parcel)

This is a request for a special exception for permanent shared parking (South Parcel); large retail (North and South Parcels) and wholesale uses (North Parcel).

The South parcel qualifies for a special exception for permanent shared parking because the Town Council of Fort Myers Beach (FMB) approved permanent parking pursuant to Resolution 99-40 on October 11, 1999. A FMB development order was issued for the parking lot. On January 22, 2001, the Town Council approved Resolution 01-03 for commercial parking and accessory parking on the South Parcel when it rezoned the North and South Parcels from a commercial conventional district to Commercial Planned Development ("CPD") with "parking, commercial" and "parking, accessory" as approved uses which were the terms utilized by the Land Development Code at that time.

Parking lot, shared permanent, is defined in Section 34-2 Definitions, "means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons or assigned to specific businesses or property."

The portion of the South Parcel (Parcel B CPD), which is marked on the South Parcel site plan, has been utilized for permanent and shared parking since 1999. Parking for the public is a necessary and desired use in the Downtown zoning district. Providing parking for the public

provides the ability to implement the Town's "park once" philosophy. A visitor or resident of the Town can park in the Downtown District and from that location enjoy the Town's assets to include: the beach, the restaurants, the retail, and the bay - so that a number of amenities offered by the Downtown are visited without having to relocate the vehicle. Consistent with LDC Section 34-2014, the parking plans for the subject property have been approved pursuant to a FMB development order. Consistent with LDC Section 34-2015 Location and Design, the parking lot has been designed with sufficient maneuvering room so that existing vehicles can leave the parking lot in a forward motion. The parking lot is paved for high turnover use.

The North Parcel and South Parcel are located in the Pedestrian Commercial Future Land Use designation which is defined as follows:

POLICY 4-B-6 "PEDESTRIAN COMMERCIAL": a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%. (emphasis supplied).

Shared and permanent parking is a use consistent with the Pedestrian Commercial designation. The request meets or exceeds all performance and locational standards as it was issued a development order by the Town of Fort Myers Beach. The continued use of parking which has been in effect for over thirteen (13) years will have no impact on environmentally critical or natural resources. The request has been found compatible with the existing and planned uses in 1999 and in 2001 by the Town Council. The use has been operated in compliance with the applicable general zoning provisions and supplemental regulations in Chapter 34 and the Land Development Code.

Since the use on the South Parcel has been in operation for over thirteen (13) years, it has had no adverse impact on the surrounding properties. In fact, parking in proximity to surrounding uses is a positive impact. The property adjacent immediately to the north is a restaurant use and the use across Third Street is a parking use; the use to the west is Old San Carlos Boulevard and retail, motel, restaurant and accessory parking uses; and the use to the south is restaurant use.

The site plan submitted with the request shows the location of the existing "permanent and shared parking" and as required also illustrates existing buildings and other improvements such as swimming pools.

"Parking, shared and permanent" is an appropriate use for the North Parcel, consistent with the Comprehensive Plan and the Land Development Code. The draft Downtown Development Agency and Review of Redevelopment and Activities Report ("Downtown Report") was presented to Town Council on November 18, 2013 and it supports the holistic approach to redevelopment and includes the following goal:

"* Identify the best design to maximize pedestrian activity and minimize traffic conflicts."

The Downtown Report reviews the prior Fort Myers Beach studies, reports and plans. In 1998 Redevelopment Plan reviewed and adopted the strategy of

"* Shared parking behind businesses on Old San Carlos."

The "Old San Carlos Boulevard - Crescent Street Master Plan" prepared and adopted in 1999 was prepared to implement the "park once" strategy which was defined as encouraging visitors to park one time and walk to various Downtown destinations. This plan suggested that the Land Development Code should accommodate shared parking.

Thereafter, the Land Development Code was amended to promote the "park-once" concept which can only be implemented by shared parking facilities.

The "park-once" concept only works with provision of shared parking as defined in the Land Development Code. Approving "parking, shared and permanent" on the North Parcel is consistent with the Land Development Code criteria for a special exception in the same manner that the Council has approved the shared parking on the South Parcel in 1999 and 2001.

Valet parking is also planned for both the North and South Parcels of Shipwreck. It is an appropriate mechanism to maximize parking which is consistent with the Downtown Report, prior studies and plans reviewed and adopted by the Town and valet parking has been approved in other locations in the Town.

RETAIL, LARGE (North Parcel and South Parcel)

The North Parcel qualifies for a special exception for "retail, large" for 7,767 square feet consisting of existing retail use of 7,029 square feet with the potential for an additional 738 square feet. If the wholesale use or motel office use are relocated, the request would permit retail in those locations.

In addition to areas (office or wholesale) that may be converted to retail, the owner envisions an expansion to the building with retail along Old San Carlos. The site plan reflects the existing retail with crosshatching and the proposed new "retail, large" addition of 5,257 SF with diagonal stair step lines. This proposed additional retail is consistent with Future Land Use designation and the Downtown zoning district

The South Parcel qualifies for a special exception for "retail, large" which is a proposed use for 8400 square feet.

On January 22, 2001 Town Council approved Resolution 01-03 for retail on the North and South Parcels (Parcels A and B on the 2001 Master Concept Plan) which was a rezoning from a commercial conventional district to Commercial Planned Development ("CPD").

The Town of Fort Myers Beach amended the Master Concept Plan pursuant to Case "ADD2002-00089" which provided and authorized the retail on the North Parcel which exceeds 5,000 square feet. Development order LDO2003-00142 authorized the addition of retail between two (2) existing buildings to connect them for retail sales pursuant to Resolution ADD2002-00089.

Retail store is defined and means:

"an establishment operating within a fully enclosed building that provides goods and incidental services directly to consumers where such goods are available for immediate purchase or rental. Retail stores are classified as small (less than 5,000 square feet) or large (more than 5,000 square feet), based on gross floor area per establishment. The following types of establishments are not considered to be retail stores for the purposes of this chapter: *Automobile fuel pumps, Automobile rentals, Marina, and Mini-warehouse.*

"Retail, Large" is a use that has been permitted by the Town of Fort Myers Beach and is desired in this location. "Retail Large" is depicted on the site plans for the North Parcel and South Parcel. It is an existing use for the North Parcel and South Parcel and the request is to obtain the special exception that will permit that use to continue. That "retail, large" use has been in existence since late 2003. Retail is a use consistent with the Pedestrian Commercial designation. The request meets or exceeds all performance and location standards pursuant to the development order that was issued by the Town of Fort Myers Beach. The continued use of "Retail, Large" will have no impact on environmentally critical or natural resources. The request has been found compatible with existing and planned uses in 2003 by the Town of Fort Myers Beach. The use is operated in compliance with the applicable general zoning provisions and supplement regulations of Chapter 34 and the Land Development Code.

The "retail large" use has no impact on surrounding properties. The property adjacent to the north is a parking use; the use across Old San Carlos is permanent parking and restaurant use; the use to the south is a restaurant use; and the use to the west is the lagoon.

Retail is a use consistent within the core (Time Square and Old San Carlos) and is also requested for the South Parcel. The area proposed for, "retail, large" on the South Parcel will appropriately reduce the amount of "shared and permanent parking" at the time of development.

The site plan submitted with the request shows the location of the existing Retail, Large use on the North Parcel and the proposed Retail Large use on the South Parcel and as required the site plans also illustrate existing buildings and other improvements such as swimming pools.

WHOLESALE USE

A special exception to continue the Wholesale Use for the North Parcel (Parcel A) is requested for 538 square feet. On January 22, 2001, the Town Council approved Resolution 01-03 for the "wholesale use" on the North Parcel (Parcel A on the 2001 MCP) which was a permitted use in the conventional zoning district. "Wholesale use" has been in existence for over twenty (20) years. Wholesale use is defined and

"means a place of business primarily engaged in preparing and selling merchandise to retailers, other businesses, or other wholesale establishments, and operating completely within an enclosed building."

Wholesale use is a use consistent with the Pedestrian Commercial designation. The request meets or exceeds all performance and location of standards pursuant to the development order that was issued by the Town of Fort Myers Beach. The continued use of "Wholesale" will have no impact on environmentally critical or natural resources. The request has been found compatible with existing and planned uses in 2001 by the Town of Fort Myers Beach. The use is operated in compliance with the applicable general zoning provisions and supplement regulations of Chapter 34 and the Land Development Code.

The use has no impact on surrounding properties. The property adjacent to the north is a parking use; the use across Old San Carlos is permanent parking and restaurant use; the use to the south is a restaurant use; and the use to the west is the lagoon. The site plan submitted with the request shows the location of the existing wholesale use and as required it also illustrates existing buildings and other improvements such as swimming pools. We respectfully request approval of a special exception for:

North Parcel

- Retail Large
- Wholesale Use
- Permanent and Shared Parking

South Parcel

- Permanent and Shared Parking
- Retail, Large

In support of the Variances:

1. Section 34-676(b) parking lot locations from off-street parking lots not being in front yards or side yards to permit existing parking to remain in front yard and side yard; and (c) to allow no connection between subject property and adjacent property.

2. Section 34-677(b)(3) and 10-416(d) and Table 10-8 from a 15' Type D Buffer between parking lots and ROW to the existing condition. In an abundance of caution this is a request from this LDC Section to permit the existing development to remain. We respectfully submit that a variance should be granted from this provision of the Code where Old San Carlos and Third Street have unique "build-to lines" and due to the required access with visibility triangles on side streets and Old San Carlos for entrance and exit.

The criteria for a variance are as follows:

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

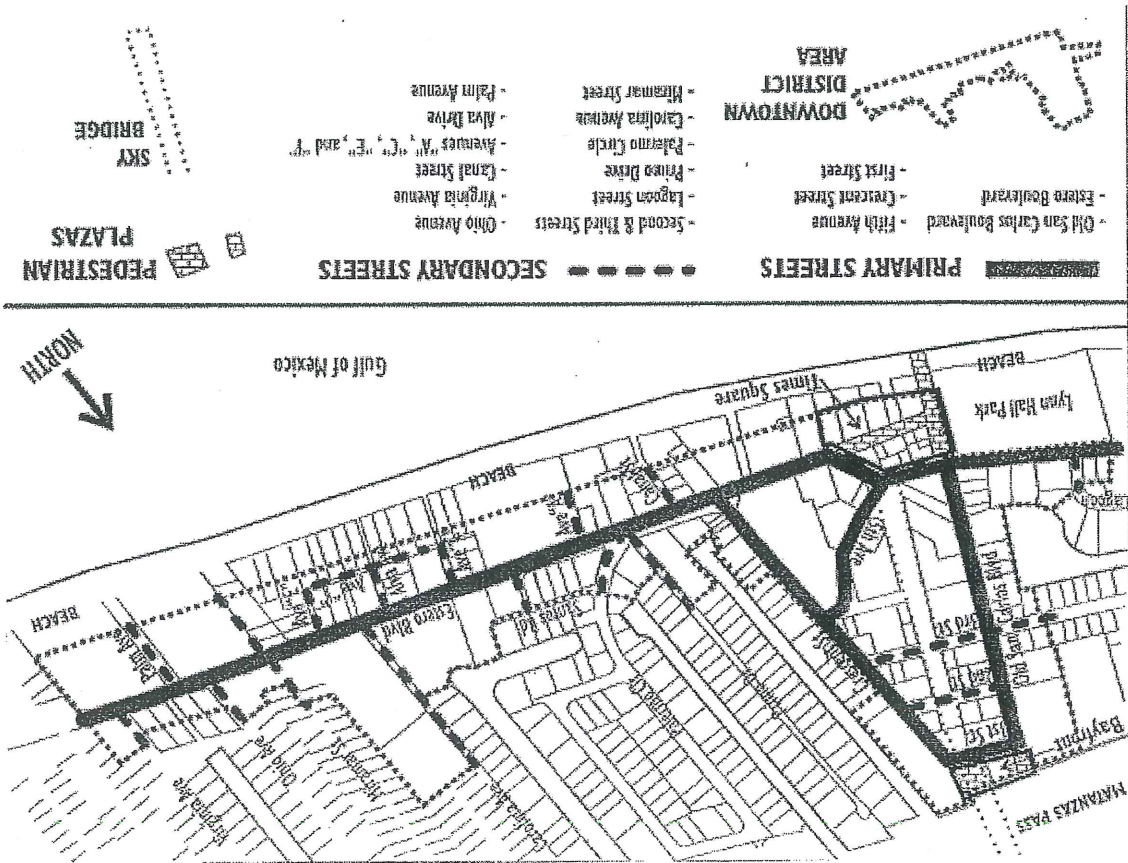
b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;

c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;

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

e. That 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.

The Downtown District boundary is set forth in Figure 34-7 below:



Parking: Section 34-676(b) and (c)

In support of Variance 1 (parking in front/side yard) and Variance 2 (reduced buffer) the exceptional circumstances are that the parking use exists and has been approved by Town Council in 1999 and approved by the LPA and Town Council in the Commercial Planned Development rezoning by Resolution 01-03. The parking use was issued a Development Order by the Town and constructed. The use of off-street parking is a valuable asset to the Town as there is not sufficient parking to serve the parking demand. The owner relied upon the Town approvals for this parking and has successfully provided this use which benefits the Downtown District to include the merchants and restaurant owners in this District.

The parking use, in compliance with the Town Council approvals and the Development Order, occurred prior to the adoption of the LDC creation of the Downtown District and the specific parking lot location regulation.

The request is the minimum variance to continue the existing approved parking where a portion is along Old San Carlos and the side street right-of-way.

The granting of the variance will not injure or be detrimental. To the contrary, the off-street parking is an asset to the Downtown District. This use provides parking for the core area of the Downtown District which is Times Square and Old San Carlos.

Much of Old San Carlos is developed with existing buildings, therefore a variance related to parking along Old San Carlos is appropriate for recognition of the existing parking use along Old San Carlos and Third Street. Because development is unique along Old San Carlos, it is not practical to amend the regulation that applies to the remainder of the Downtown District.

The request regarding Section 34-676(c) is to allow no interconnection with the South Parcel and the adjacent property which code provision creates liability. The adjacent property is developed and requires no additional vehicular access. A code provision that mandate granting of property rights to third parties is not valid.

Section 34-677 provides support for the Town's "Park Once" district. Although future goals include the Town providing additional parking, the Town should support maintaining existing parking and support additional parking to be provided by the private sector.

The parking is an existing use that was approved and developed prior to adoption of the Downtown buffer provisions which provisions are intended to apply to the entire District which has different build-to-lines than Old San Carlos and Third Street.

This is the minimum variance. The prior approvals establish that the parking use as it currently operates is an asset to the Town and support the Downtown District. Approval of the variance is the appropriate relief rather than amending the Code.

3. A variance from LDC Section 10-416(c), Internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2(a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2(d) no landscape every 10 spaces requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass; and 2(g) tree grates.

Justification for relief from Section 10-416(c). This section of the Code authorizes staff to grant administrative relief. Staff recommended that it be included in this public hearing application to provide a full picture of the request. Section 10-416(c) provides a landscaping requirement for internal improvements to parking lots. Basically it appears this provision was taken from the Lee County Code which recognizes that parking is typically placed along the front of the parcel between the right-of-way and the principal structure. Therefore, landscaping is part of the public view area. The specific design requirements for the Downtown core and specifically Old San Carlos requires that buildings be built with a zero (0) to five (5) foot build-to from the Old San Carlos street right-of-way. Thus, there will not be permanent parking lots along Old San Carlos that would require internal landscaping. Also it should be recognized that by basically transporting the Lee County Code that often these criteria would apply to larger parcels than one would find in the Downtown core of Fort Myers Beach. Therefore, parking on a relatively small parcel compared to the application of these criteria on large tracts affects the

ability to provide parking. Therefore, it is a benefit not only to the property owner but to the Town to maximize the parking and maximizing the parking is consistent with these strategies developed and adopted by the Town Council for Times Square and Old San Carlos.

Variance No. 4

A variance from Land Development Code Section 34-2016(1) and (2), Dimensions, to permit

Angle	Parking Spaces	One-Way Aisle	Two-Way Aisle
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

Justification. The 90° parking and aisle dimensions have been in existence on the South Parcel of Shipwreck for over a decade. The dimensions were approved in 2001 and a Development Order was issued by the Town. Parking has operated safely and efficiently with these dimensions. These are appropriate dimensions for the size of the vehicles that typically use for the parking.

Variance No. 5

A variance from Section 34-622(a) and Section 34-3131 to eliminate visibility triangle for the access on Third Street.

Justification. Due to improvements within the right-of-way on Third Street that have been approved by the Town, an on-site visibility triangle provides no benefit and is not necessary for ingress or egress to the parking area. A visibility triangle will not provide increased visibility in this location.

- Request: The Code provides that an application must request permission for an overhang within the right-of-way pursuant to Section 34-674(a)(4). This is a request for a 12-foot overhang.

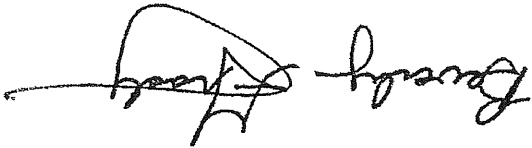
Justification. Land Development Code provides that a property owner may extend an overhang into the right-of-way along Old San Carlos with permission from the Town of Fort Myers Beach. A similar overhang is already approved for Zushi Sushi and at Shipwreck. Overhangs provide protection from inclement weather as well as the sun and therefore encourage pedestrian activity.

Enclosed are the site plans:

1. Special Exception for shared Parking and "Retail, large" – South parcel (existing and future)
2. Valet parking on South parcel
3. South parcel Variances 1 parking in front/side yard; no interconnection, 2 buffer and 3 no internal buffer
4. South parcel Variance 4, parking dimensions
5. South parcel Variance 5, visibility triangle
6. North parcel Special Exception "Retail, Large"; wholesale
7. North parcel Special Exception parking (current)
8. North Parcel Special Exception parking (future)
9. North parcel Variances 1 parking in side yard 3 no internal buffer, 4 parking dimensions

Very truly yours,

ROETZEL & ANDRESS, LPA



Beverly Grady

BG/ro
Enclosures

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
 (LR, BOOK 1347, PAGE 17)
 RUSTY'S SOUTH PARCEL TO DOWNTOWN WITH
 SPECIAL EXCEPTION FOR RETAIL, LARGE
 RETAIL
 PARKING
 EDGE OF PAVEMENT
 2' CURB & GUTTER

2

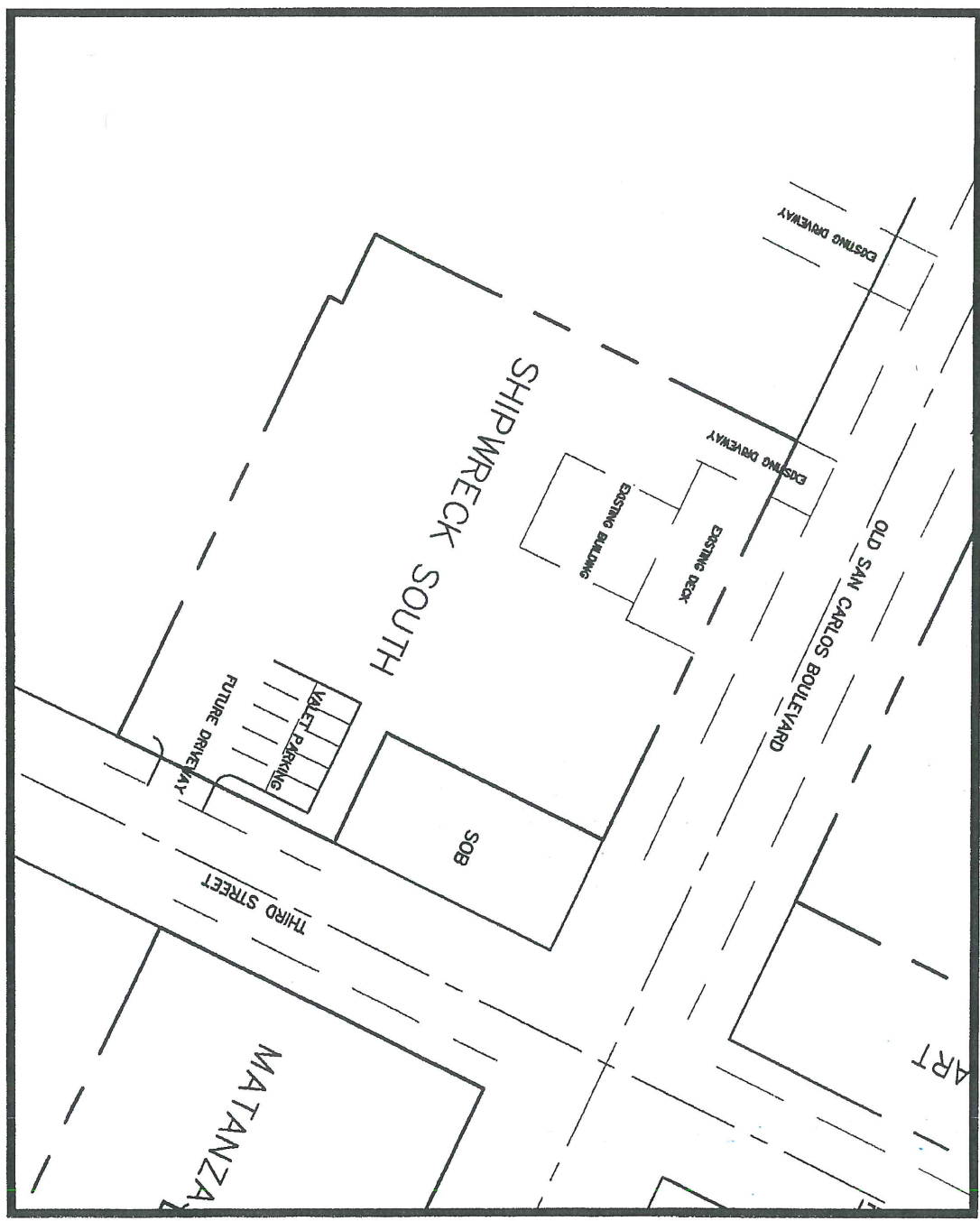
43 Barley Circle, Suite 200
Fort Myers, FL 33907
Phone: (239) 433-4231
Fax: (239) 433-9632
Email: dean@tdmconsulting.com



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EXHIBIT A
SHIPWRECK SOUTH
VALET PARKING EXHIBIT
JOHN RICHARD
FORT MYERS BEACH, FL
SOURCE: TDM, 12/13

1" = 50'



2 TDM

Variance 1, 2, 3

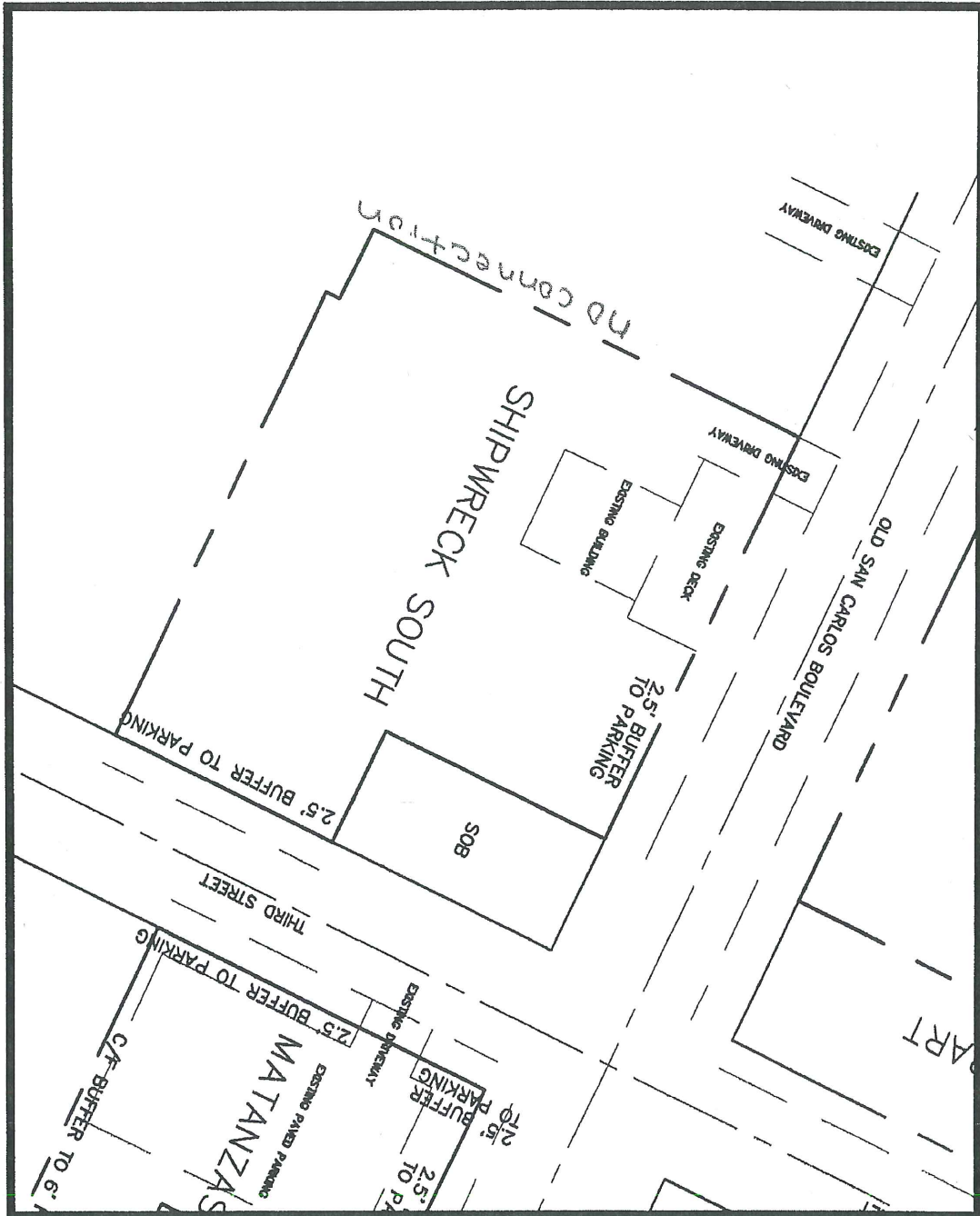
43 Barkley Circle, Suite 200
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Phone: (239) 433-4231
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Email: dean@tdmconsulting.com



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EXHIBIT A
REDUCED BUFFER EXHIBIT
SHIPWRECK SOUTH
JOHN RICHARD
FORT MYERS BEACH, FL
SOURCE: TDM, 12/13

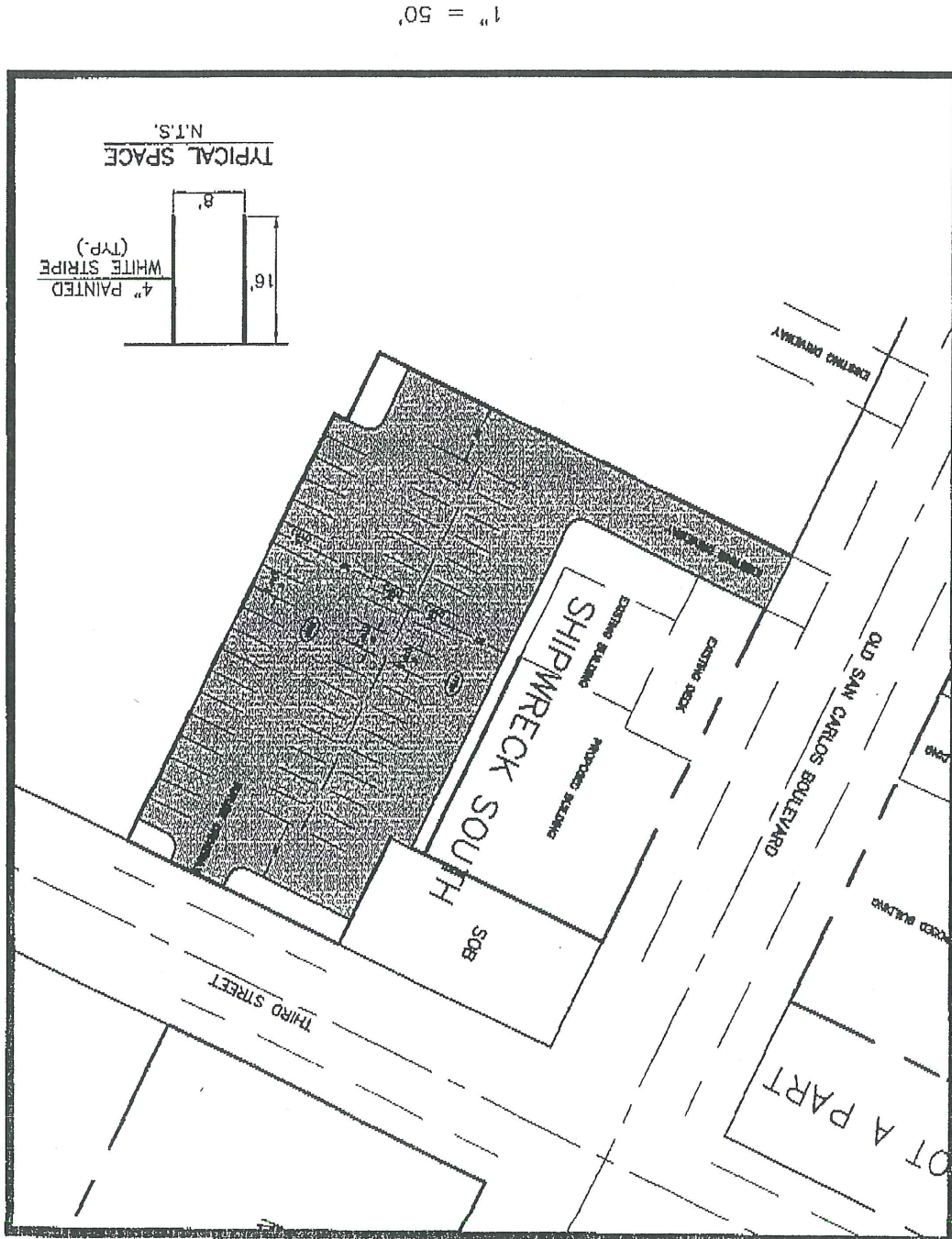
1" = 50'



parking
dimension
variance



TCDM
CONSULTING INC.
CIVIL ENGINEERING



5
Variance 5 Read

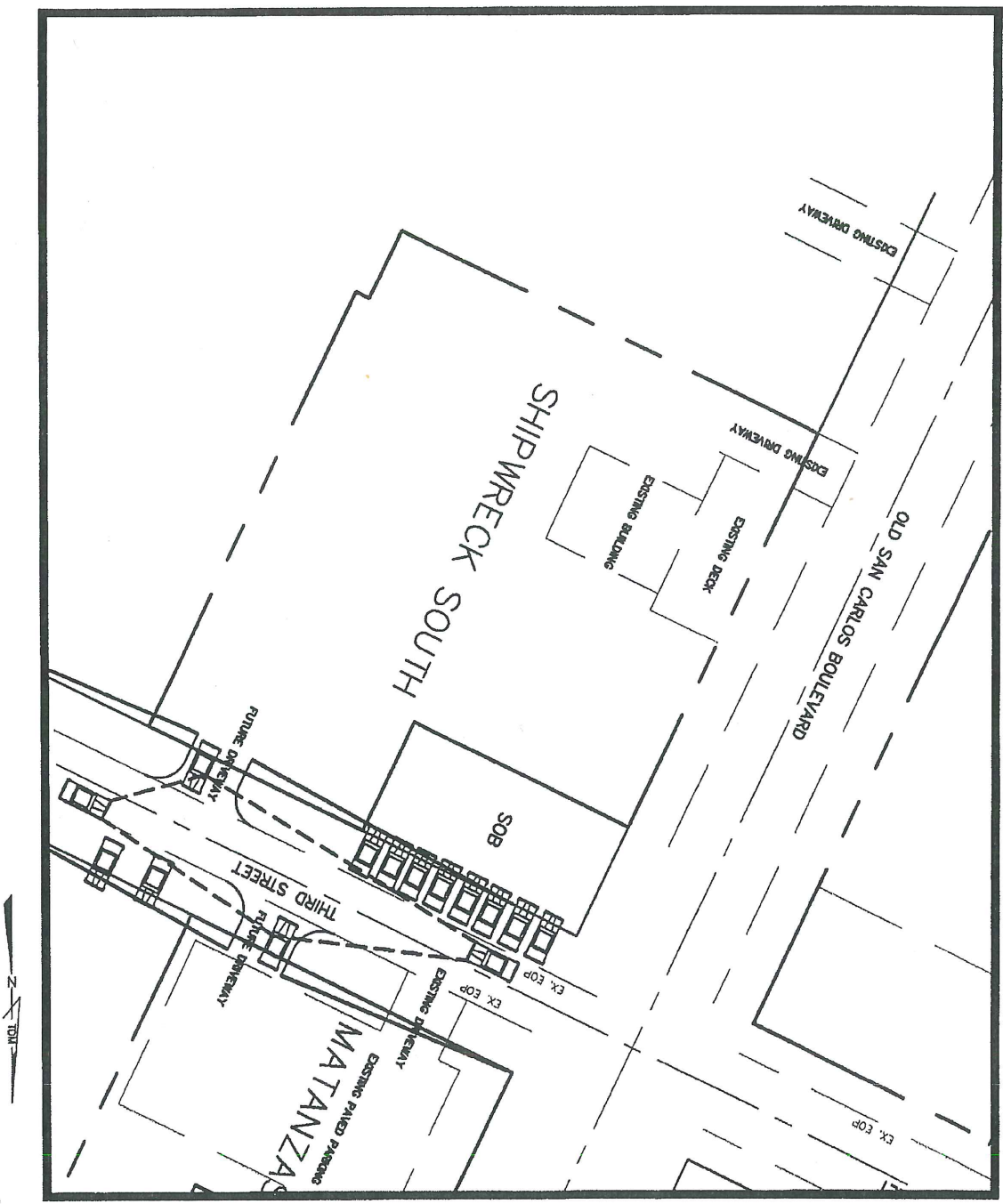
43 Barkley Circle, Suite 200
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Fax: (239) 433-9632
Email: dean@tdmconsulting.com



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EXHIBIT 1
SHIPWRECK SOUTH
SITE VISIBILITY TRIANGLE EXHIBIT
JOHN RICHARD
FORT MYERS BEACH, FL
SOURCE: TDM, 12/13

1" = 50'



7

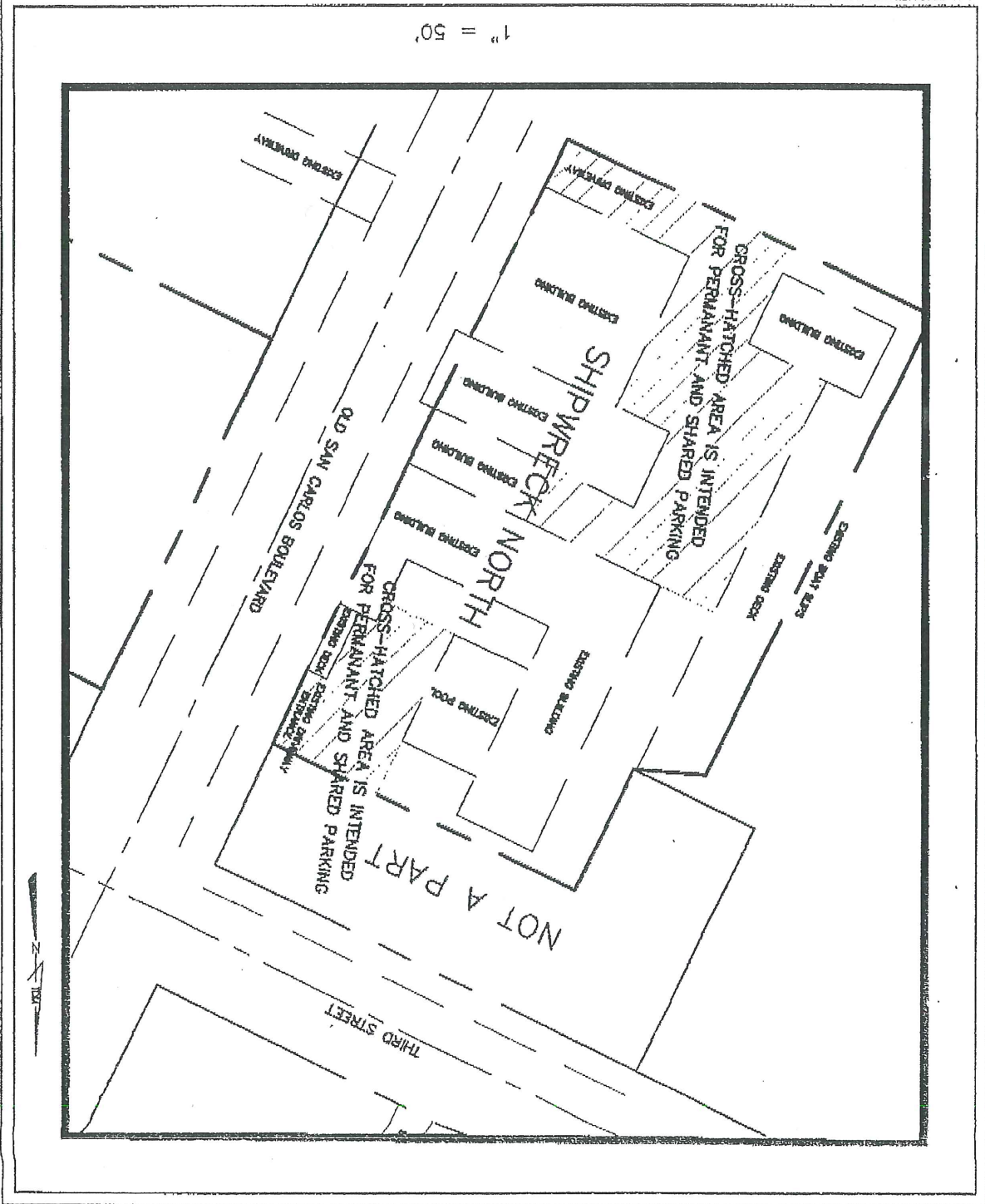
EXHIBIT A
SHIPWRECK NORTH
PERMANENT SHARED PARKING EXHIBIT-CURRENT
 JOHN RICHARD
 FORT MYERS BEACH, FL
 Source: TDM, 12/13

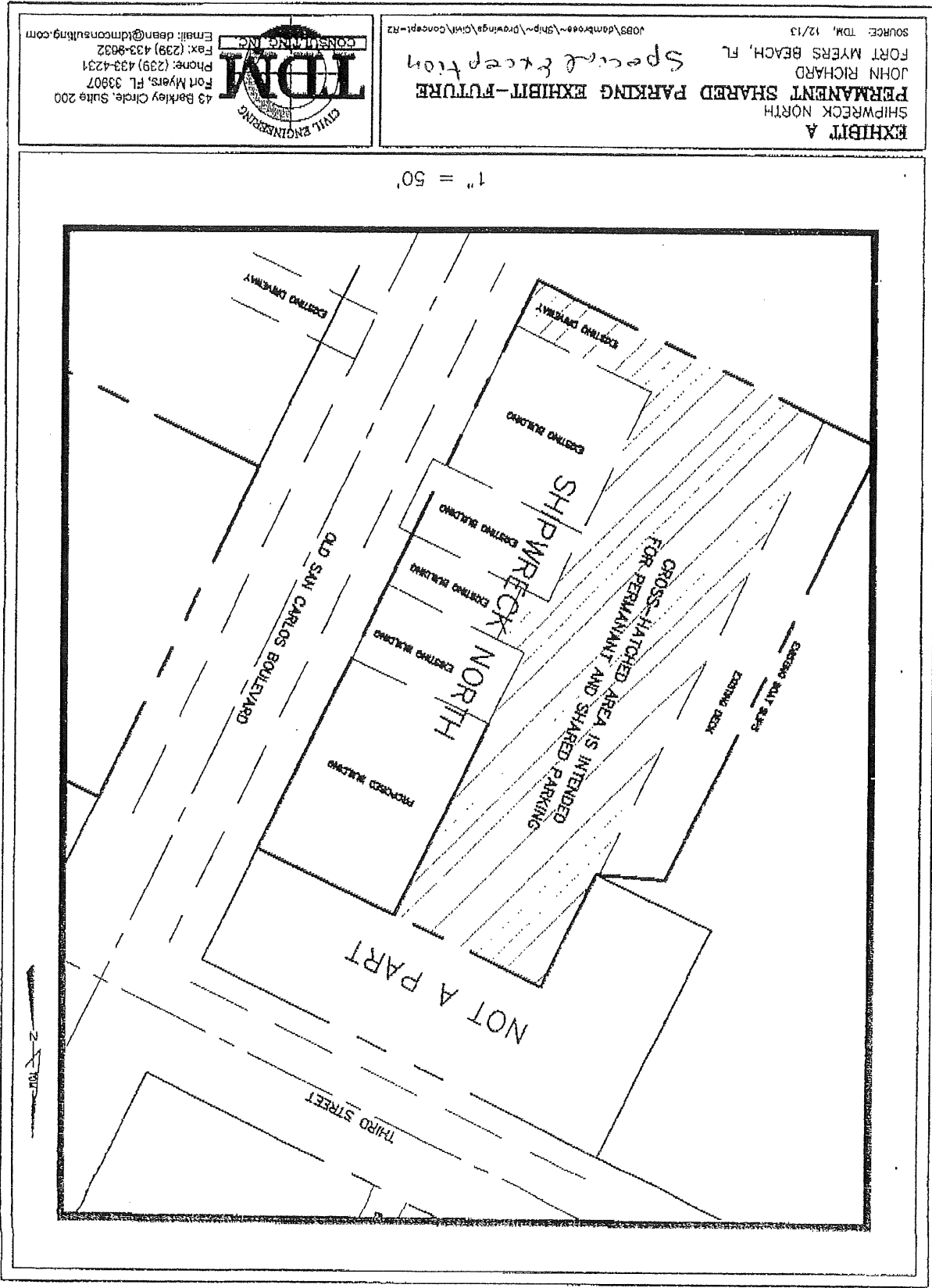
Special Exception

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 Fax: (239) 433-9832
 Email: dean@tdmconsulting.com

TDM
 CIVIL ENGINEERING
 CONSULTING INC.





\\003\dambr\000\ship\Drawings\Civil\concept-R2

SOURCE: TDM, 12/13

EXHIBIT A
SHIPWRECK NORTH
PERMANENT SHARED PARKING EXHIBIT-FUTURE
JOHN RICHARD
FORT MYERS BEACH, FL
Special Exception

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6

Variance, 3+4

EXHIBIT A
SHIPWRECK NORTH
PARKING LAYOUT
JOHN RICHARD
FORT MYERS BEACH, FL

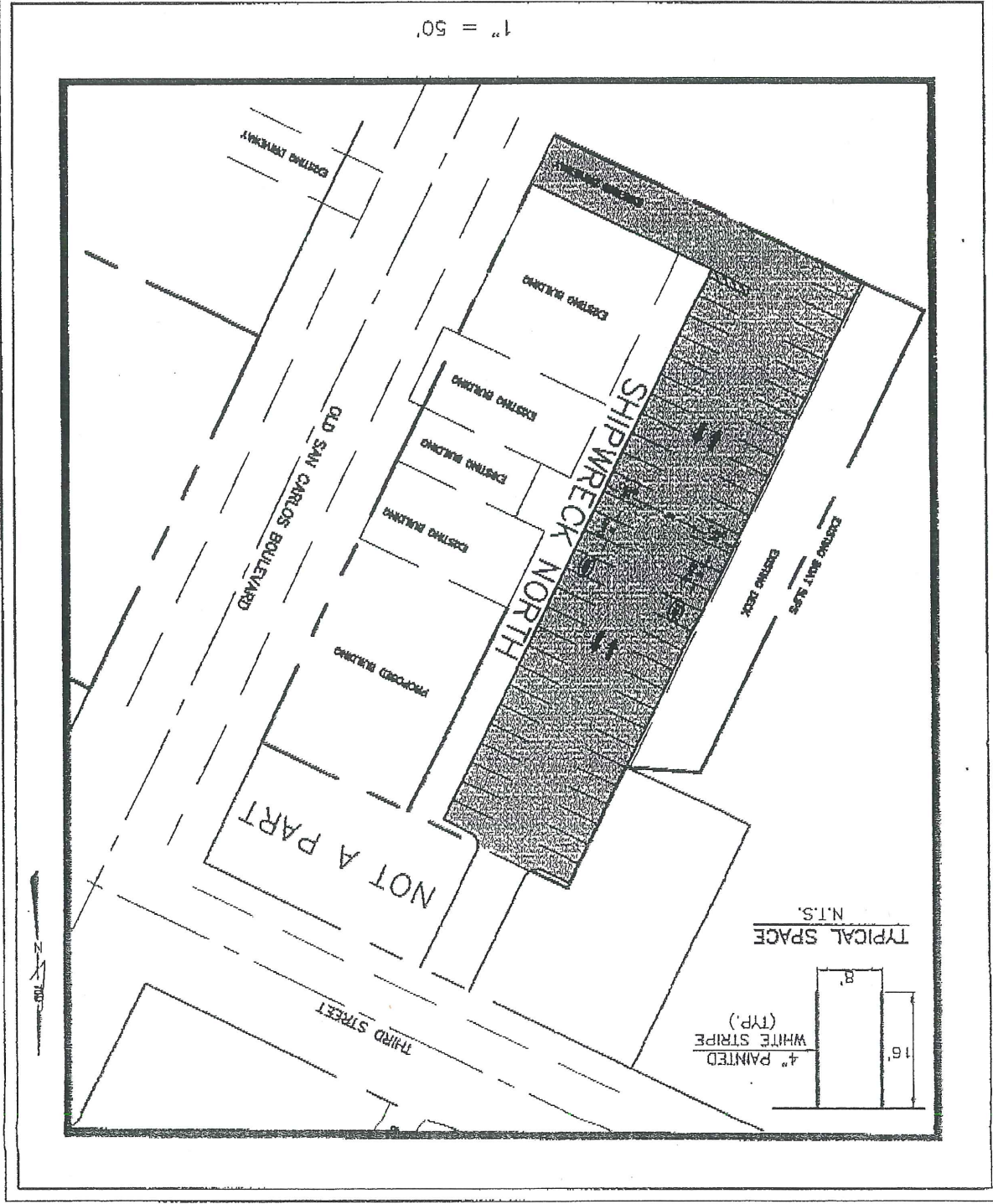
Source: TDM, 12/13

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parking dimension
variance

TDM
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Email: dean@tdmconsulting.com

1" = 50'



O'Brien, Robin

From: O'Brien, Robin
Sent: Monday, December 16, 2013 4:58 PM
To: 'leslee@fortmyersbeachfl.gov'
Cc: Grady, Beverly; jwr@embargoqmail.com; 'Dean Martin (dean@tdmconsulting.com)'
Subject: Rusty's/Shipwreck - Special Exception adding North Parcel of Shipwreck; Amended Narrative amending existing variances already filed; Addendum for Additional Relief Narrative for Special Exception application REVISED for future retail(7624958_2).DOCX; Richard - (7765742_1).DOCX; Addendum to Narrative for Rusty-s-Shipwreck variance of 10_31_13(7878549_1).DOCX

Ms. Duimer:
The attached documents are being sent to you pursuant to Beverly Grady's instructions.

Robin O'Brien
Legal Secretary to Sean M. Ellis and Beverly Grady
(and the retired Steven I. Winer)



2320 First Street, Suite 1000
Ft. Myers, FL 33901
Direct Phone No.: 239.338-4254
Main Phone No: 239.337.3850
Fax No.: 239.337.0970

Email: robrien@ralaw.com
www.ralaw.com

Roetzel & Associates, A Legal Professional Association

Both Robin O'Brien and Roetzel & Associates intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Robin O'Brien immediately at 239-338-4254. Thank you.

TOWN OF
FORT MYERS BEACH
DEC 16 2013
RECEIVED BY

EXHIBIT A

NARRATIVE STATEMENT FOR SPECIAL EXCEPTION REQUEST
REVISED DECEMBER 2013 TO ADD "PARKING, SHARED AND PERMANENT" TO
NORTH PARCEL

PARKING (North and South Parcel)

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visitors to park one time and walk to various Downtown destinations. This plan suggested that the Land Development Code should accommodate shared parking. I

Thereafter, the Land Development Code was amended to promote the "park-once" concept which can only be implemented by shared parking facilities.

The "park-once" concept only works with provision of shared parking as defined in the Land Development Code. Approving "parking, shared and permanent" on the North Parcel is consistent with the Land Development Code criteria for a special exception in the same manner that the Council has approved the shared parking on the South Parcel in 1999 and 2001.

Valet parking is also planned for both the North and South Parcels of Shipwreck. It is an appropriate mechanism to maximize parking which is consistent with the Downtown Report, prior studies and plans reviewed and adopted by the Town and valet parking has been approved in other locations in the Town.

RETAIL, LARGE (North Parcel & South Parcel)

The North Parcel qualifies for a special exception for "retail, large" for 7,767 square feet consisting of existing retail use of 7,029 square feet with the potential for an additional 738 square feet. If the wholesale use or motel office use are relocated, the request would permit retail in those locations.

In addition to areas (office or wholesale) that may be converted to retail, the owner envisions an expansion to the building with retail along Old San Carlos. The site plan reflects the existing retail with crosshatching and the proposed new "retail, large" addition of 5,257 SF with diagonal stairstep lines. This proposed additional retail is consistent with Future Land Use designation and the Downtown zoning district

The South Parcel qualifies for a special exception for "retail, large" which is a proposed use for 8400 square feet.

On January 22, 2001 Town Council approved Resolution 01-03 for retail on the North and South Parcels (Parcels A and B on the 2001 Master Concept Plan) which was a rezoning from a commercial conventional district to Commercial Planned Development ("CPD").

The Town of Fort Myers Beach amended the Master Concept Plan pursuant to Case "ADD2002-00089" which provided and authorized the retail on the North Parcel which exceeds 5,000 square feet. Development order LDO2003-00142 authorized the addition of retail between two (2) existing buildings to connect them for retail sales pursuant to Resolution ADD2002-00089.

Retail store is defined and means:

"an establishment operating within a fully enclosed building that provides goods and incidental services directly to consumers where such goods are available for immediate purchase or rental. Retail stores are classified as small (less than 5,000 square feet) or large (more than 5,000 square feet), based on gross floor area per

establishment. The following types of establishments are not considered to be retail stores for the purposes of this chapter: *Automobile fuel pumps, Automobile rentals, Marina, and Mini-warehouse.*

"Retail, Large" is a use that has been permitted by the Town of Fort Myers Beach and is desired in this location. "Retail Large" is depicted on the site plans for the North Parcel and South Parcel. It is an existing use for the North Parcel and the request is to obtain the special exception that will permit that use to continue. That "retail, large" use has been in existence since late 2003. Retail is a use consistent with the Pedestrian Commercial designation. The request meets or exceeds all performance and location standards pursuant to the development order that was issued by the Town of Fort Myers Beach. The continued use of "Retail, Large" will have no impact on environmentally critical or natural resources. The request has been found compatible with existing and planned uses in 2003 by the Town of Fort Myers Beach. The use is operated in compliance with the applicable general zoning provisions and supplement regulations of Chapter 34 and the Land Development Code.

The "retail large" use has no impact on surrounding properties. The property adjacent to the north is a parking use; the use across Old San Carlos is permanent parking and restaurant use; the use to the south is a restaurant use; and the use to the west is the lagoon.

Retail is a use consistent within the core (Time Square and Old San Carlos) and is also requested for the South Parcel. The area proposed for, "retail, large" on the South Parcel will appropriately reduce the amount of "shared and permanent parking" at the time of development.

The site plan submitted with the request shows the location of the existing Retail, Large use on the North Parcel and the proposed Retail Large use on the South Parcel and as required the site plans also illustrate existing buildings and other improvements such as swimming pools.

WHOLESALE USE

A special exception to continue the Wholesale Use for the North Parcel (Parcel A) is requested for 538 square feet. On January 22, 2001, the Town Council approved Resolution 01-03 for the "wholesale use" on the North Parcel (Parcel A on the 2001 MCP) which was a permitted use in the conventional zoning district. "Wholesale use" has been in existence for over twenty (20) years. Wholesale use is defined and

"means a place of business primarily engaged in preparing and selling merchandise to retailers, other businesses, or other wholesale establishments, and operating completely within an enclosed building."

Wholesale use is a use consistent with the Pedestrian Commercial designation. The request meets or exceeds all performance and location of standards pursuant to the development order that was issued by the Town of Fort Myers Beach. The continued use of "Wholesale" will have no impact on environmentally critical or natural resources. The request has been found compatible with existing and planned uses in 2001 by the Town of Fort Myers Beach. The use is operated in compliance with the applicable general zoning provisions and supplement regulations of Chapter 34 and the Land Development Code.

The use has no impact on surrounding properties. The property adjacent to the north is a parking use; the use across Old San Carlos is permanent parking and restaurant use; the use to the south is a restaurant use; and the use to the west is the lagoon.

The site plan submitted with the request shows the location of the existing wholesale use and as required it also illustrates existing buildings and other improvements such as swimming pools. We respectfully request approval of a special exception for:

North Parcel

- Retail Large
- Wholesale Use

South Parcel

- Permanent and Shared Parking
- Retail, Large

The Pedestrian Commercial future land use designation pursuant to Policy 4-B-6 of the Fort Myers Beach Comprehensive Plan states that is intended to be "a commercial district applied to the intense activity center of Times Square (including Old San Carlos and nearby portions of Estero Boulevard)". Commercial activities must contribute to the pedestrian-oriented public realm. Retail furthers Policy 4-B-6 of the Comprehensive Plan because it is pedestrian-oriented and in close proximity and walking distance to nearby hotels, motels, restaurants and other commercial establishments promoting the walkability of the Time Square district.

NARRATIVE FOR RUSTY'S VARIANCE IN CONJUNCTION WITH RE-
ZONING/SPECIAL EXCEPTION October 31, 2013

SEE ADDENDUM FOR ADDITIONAL VARIANCE RELIEF DATED DECEMBER 16, 2013

This is a request for a variance from:

1. Section 34-676(b) parking lot locations from off-street parking lots not being in front yards or side yards to permit existing parking to remain in front yard and side yard; and

(c) to allow no connection between subject property and adjacent

property.

2. Section 34-677(b)(3) and 10-416(d) and Table 10-8 from a 15' Type D Buffer

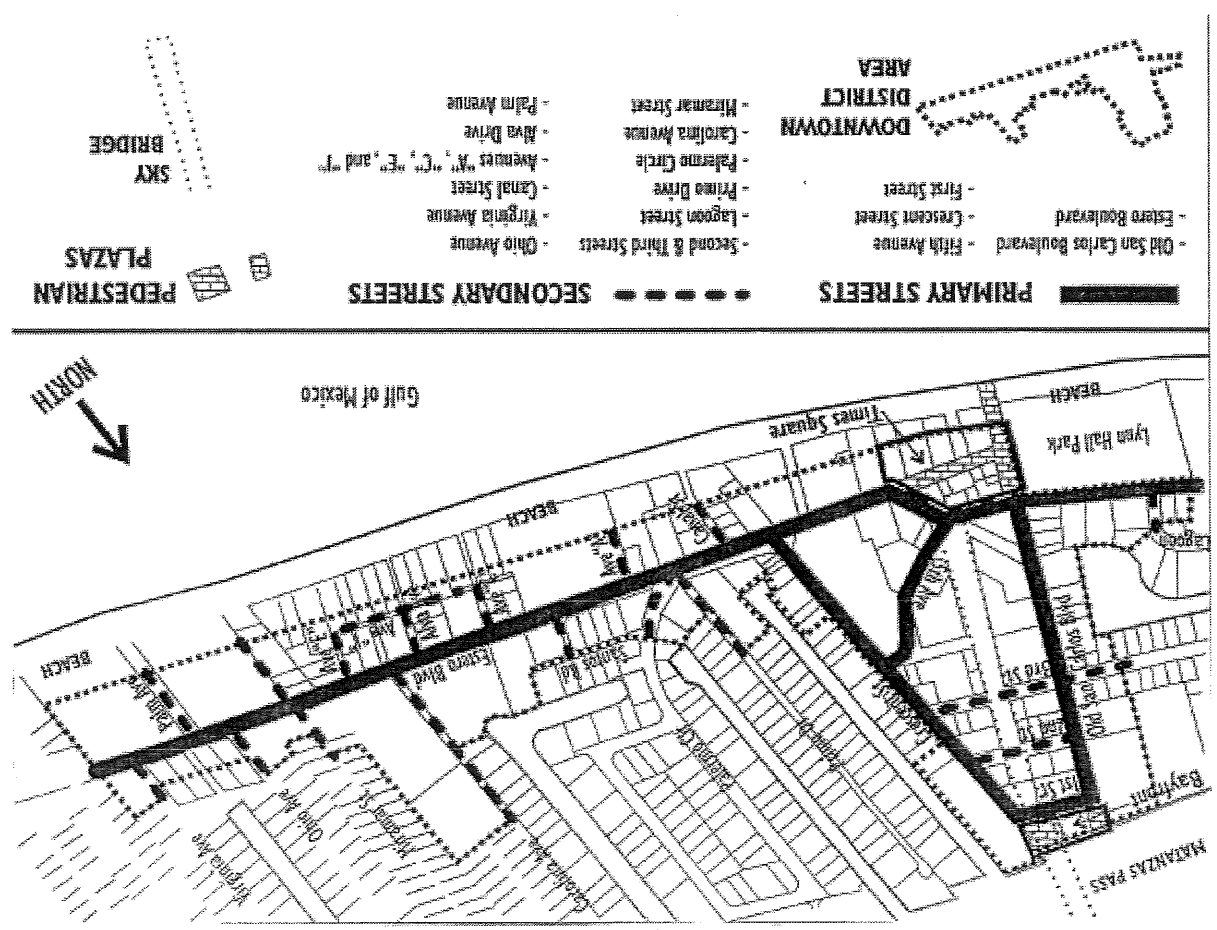
between parking lots and ROW to the existing condition. In an abundance of caution this is a request from this LDC Section to permit the existing development to remain. We respectfully submit that a variance should be granted from this provision of the Code where Old San Carlos and Third Street have unique "build-to lines" and due to the required access with visibility triangles on side streets and Old San Carlos for entrance and exit.

The criteria for a variance are as follows:

- a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not essential to protect public policy;
- b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;
- c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
- d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

- e. That 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.

The Downtown District boundary is set forth in Figure 34-7 below:



Parking: Section 34-676(b) and (c)

The exceptional circumstances are that the parking use exists and has been approved by Town Council in 1999 and approved by the LPA and Town Council in the Commercial Planned Development rezoning by Resolution 01-03. The parking use was issued a Development Order by the Town and constructed. The use of off-street parking is a valuable asset to the Town as there is not sufficient parking to serve the parking demand. The owner relied upon the Town

approvals for this parking and has successfully provided this use which benefits the Downtown District to include the merchants and restaurant owners in this District.

The parking use, in compliance with the Town Council approvals and the Development Order, occurred prior to the adoption of the LDC creation of the Downtown District and the specific parking lot location regulation.

The request is the minimum variance to continue the existing approved parking where a portion is along Old San Carlos and the side street right-of-way.

The granting of the variance will not injure or be detrimental. To the contrary, the off-street parking is an asset to the Downtown District. This use provides parking for the core area of the Downtown District which is Times Square and Old San Carlos.

Much of Old San Carlos is developed with existing buildings, therefore a variance related to parking on Old San Carlos is appropriate to approve the existing parking use along Old San Carlos and Third Street. Therefore, it is not practical to amend the regulation.

The request regarding Section 34-676(c) is to allow no interconnection with adjacent property. Adjacent property is developed and requires not additional vehicular access.
Mandating the granting of property rights to third parties is not valid.

Variance No. 2

Section 34-677 provides support for the Town's "Park One" district. Although future goals include the Town providing additional parking, the Town should support maintaining existing parking and support additional parking to be provided by the private sector.

As to the buffer between the parking and ROW, we respectfully submit that other provisions of the Code reflect that this requirement should not be a requirement along Old San Carlos and that other provisions of the Code justify this relief for an existing use from a code adopted after the approval and implementation of this use.

The buffer provision applies to all of the Downtown District reflected earlier in Figure 36-7. But the LDC **requires** that **ONLY** on Old San Carlos to build-to-line must be zero foot (0') setback. Thus, the LDC requires that the building be a zero setback and any buffer would be required to be removed. The Code does not require a needless act. This is temporary relief since there was no buffer requirement when a building is constructed.

Parking in terms of long range planning is an interim use. There is no reason to require the LDC Table 10-8 15' Type D buffer with trees and hedge when LDC 34-674(a)(1)a with a zero (0') build-to-line requires that buffer to be completely destroyed at the time of construction of the building. Also the build-to-line along Third Street is zero foot (0') to five feet (5'). See LDC 34-674(a)(1)b. Again the Code does not require a needless act that would result in destruction of the buffer along Third Street.

The Code also requires visibility triangles be maintained for each access precluding a Type D buffer in the visibility triangle at the access onto Third Street and Old San Carlos. The parking is an existing use that was approved and developed prior to adoption of the Downtown buffer provisions which provisions are intended to apply to the entire District which has different build-to-lines than Old San Carlos and Third Street.

This is the minimum variance. This prior approvals establish that the parking use as it currently operates is an asset to the Town and support the Downtown District. Approval of the variance is the appropriate relief rather than amending the Code.

We request staff's recommendation of approval of the variances.

APPENDUM FOR ADDITIONAL VARIANCE RELIEF (SHIPWRECK)

DATED DECEMBER 16, 2013

VAR2013-0007

This is a request for additional variance.

3. A variance from LDC Section 10-416(c), Internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2(a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2(d) no landscape every 10 spaces requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass; and 2(g) tree grates.

Justification for relief from Section 10-416(c). This section of the Code authorizes staff to grant administrative relief. Staff recommended that it be included in this public hearing application to provide a full picture of the request. Section 10-416(c) provides a landscaping requirement for internal improvements to parking lots. Basically it appears this provision was taken from the Lee County Code which recognizes that parking is typically placed along the front of the parcel between the right-of-way and the principal structure. Therefore, landscaping is part of the public view area. The specific design requirements for the Downtown core and specifically Old San Carlos requires that buildings be built with a zero (0) to five (5) foot build-to from the Old San Carlos street right-of-way. Thus, there will not be permanent parking lots along Old San Carlos that would require internal landscaping. Also it should be recognized that by basically transporting the Lee County Code that often these criteria would apply to larger parcels than one would find in the Downtown core of Fort Myers Beach. Therefore, parking on a relatively small parcel compared to the application of these criteria on large tracts affects the ability to provide parking. Therefore, it is a benefit not only to the property owner but to the Town to maximize the parking and maximizing the parking is consistent with these strategies developed and adopted by the Town Council for Times Square and Old San Carlos.

Variance No. 4

A variance from Land Development Code Section 34-2016(1) and (2), Dimensions, to permit

Angle	Parking Spaces	One-Way Aisle	Two-Way Aisle
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

Justification. The 90° parking and aisle dimensions have been in existence on the South Parcel of Shipwreck for over a decade. The dimensions were approved in 2001 and a Development Order was issued by the Town. Parking has operated safely and efficiently with these dimensions. These are appropriate dimensions for the size of the vehicles that typically use for the parking.

Variance No. 5

A variance from Section 34-622(a) and Section 34-3131 to eliminate visibility triangle for the access on Third Street.

Justification. Due to improvements within the right-of-way on Third Street that have been approved by the Town, an on-site visibility triangle provides no benefit and is not necessary for ingress or egress to the parking area. A visibility triangle will not provide increased visibility in this location.

Request: The Code provides that an application must request permission for an overhang within the right-of-way pursuant to Section 34-674(a)(4). This is a request for a 12-foot overhang.

Justification. Land Development Code provides that a property owner may extend an overhang into the right-of-way along Old San Carlos with permission from the Town of Fort Myers Beach. A similar overhang is already approved for Zushi Sushi and at Shipwreck. Overhangs provide protection from inclement weather as well as the sun and therefore encourage pedestrian activity.

43 Barkley Circle, Suite 200
Fort Myers, FL 33907
Phone: (239) 433-4231
Fax: (239) 433-9632
Email: dean@tdmconsulting.com

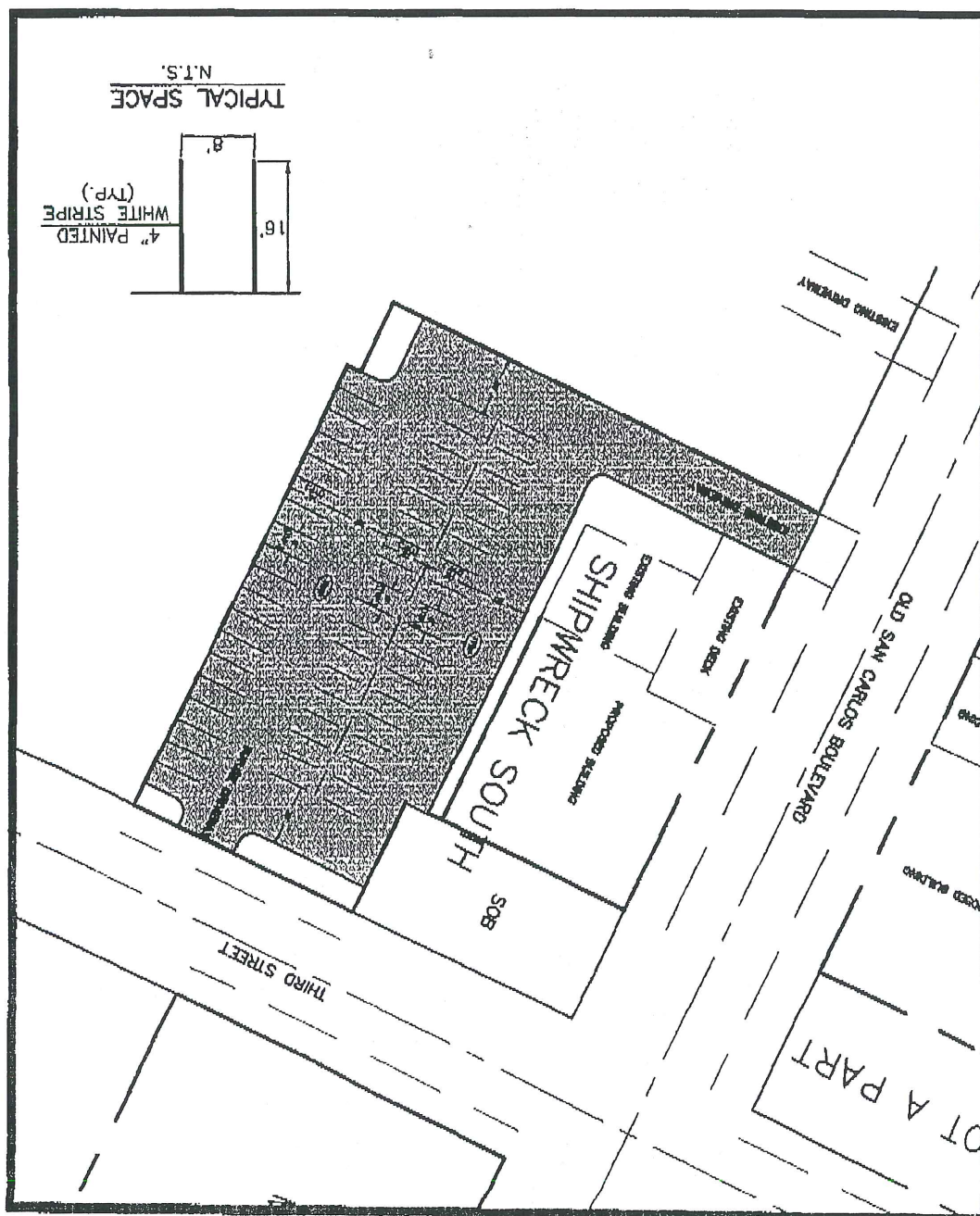


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Parking
Dimension
Variance

EXHIBIT A
SHIPWRECK SOUTH
PARKING LAYOUT
JOHN RICHARD
FORT MYERS BEACH, FL
SOURCE: TDM, 12/13

1" = 50'



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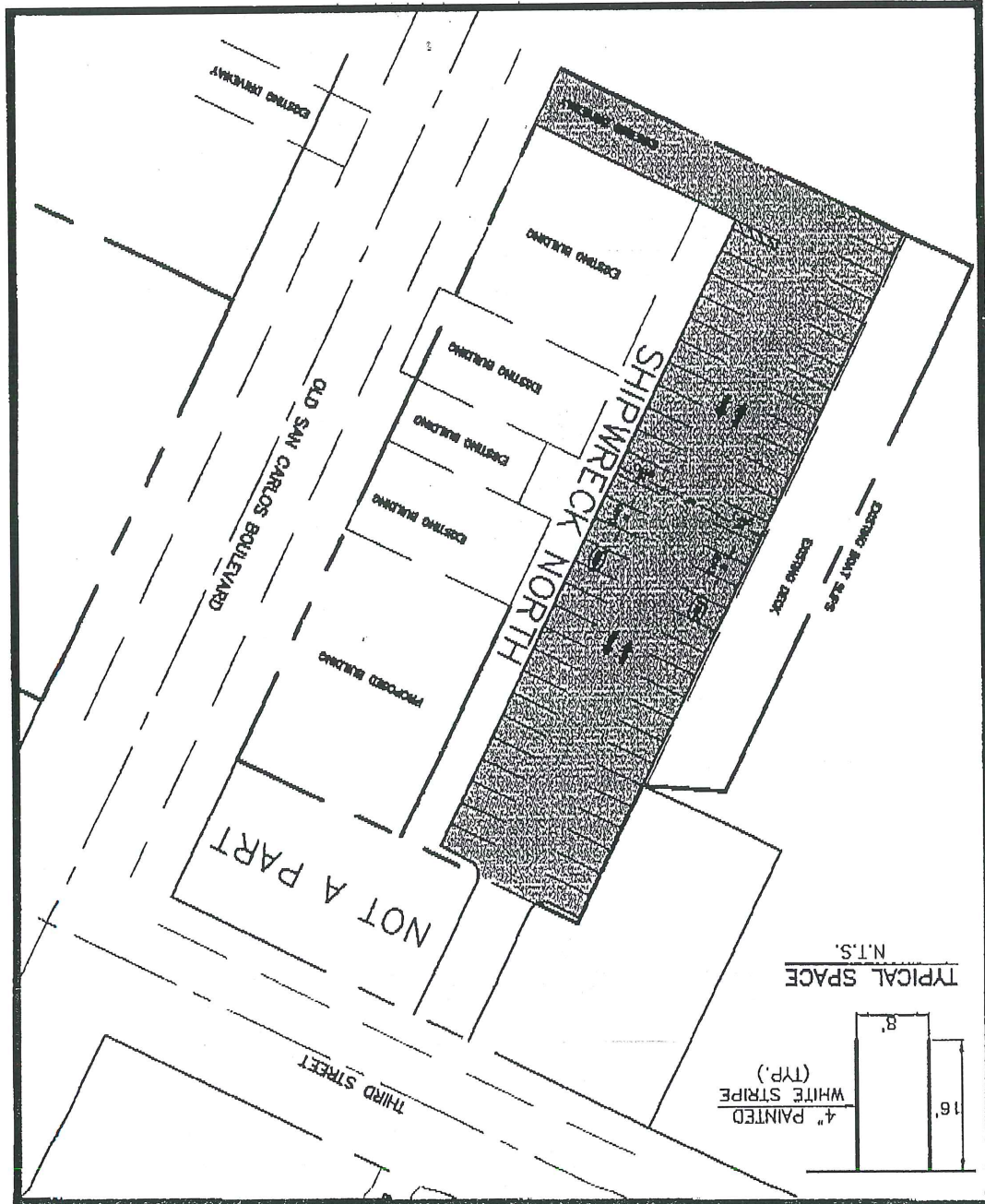


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EXHIBIT A
SHIPWRECK NORTH
PARKING LAYOUT
JOHN RICHARD
FORT MYERS BEACH, FL
Source: TDM, 12/13

Parking dimension
variance

1" = 50'



NOT A PART

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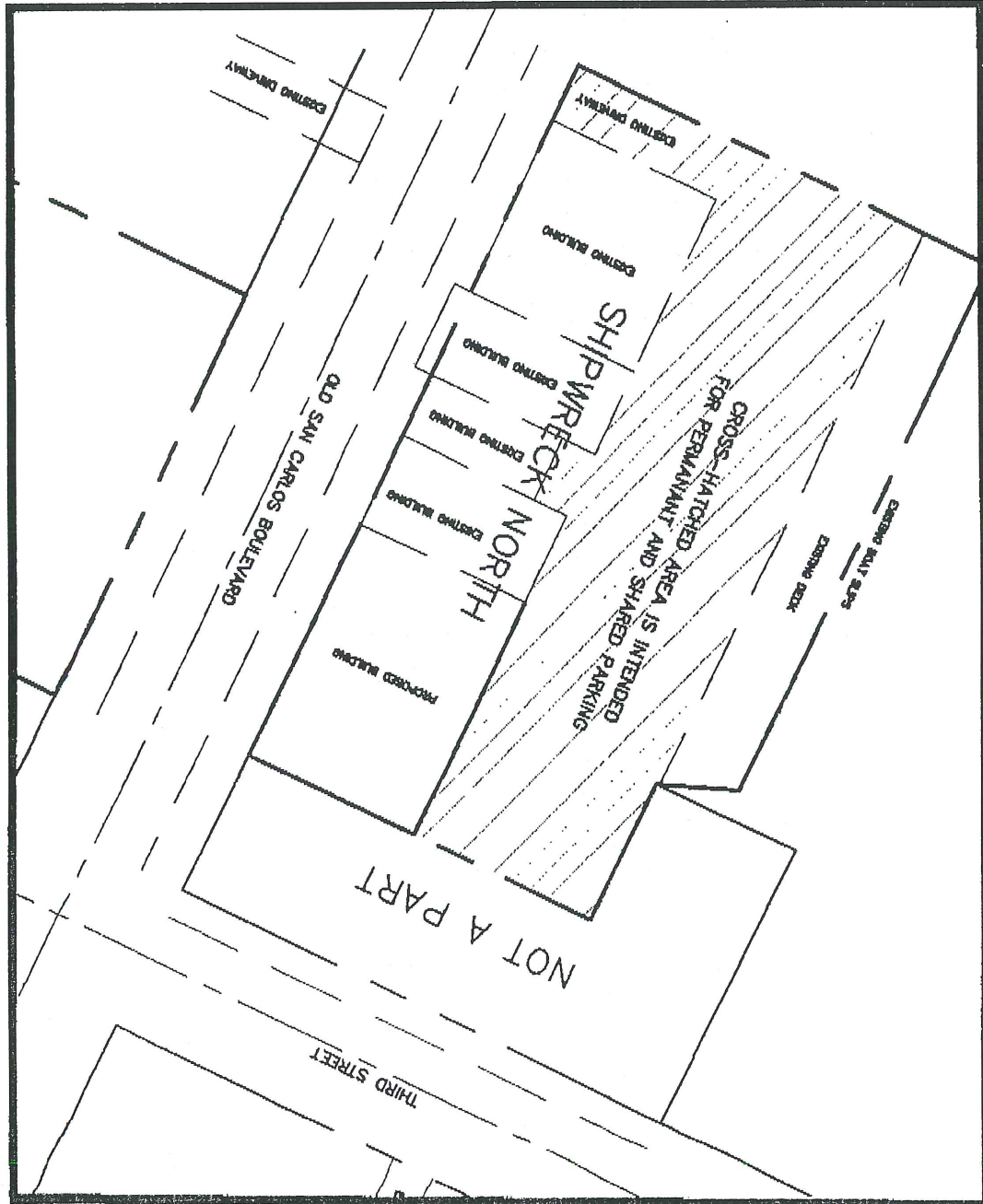


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SOURCE: TDM, 12/13

Special Exception

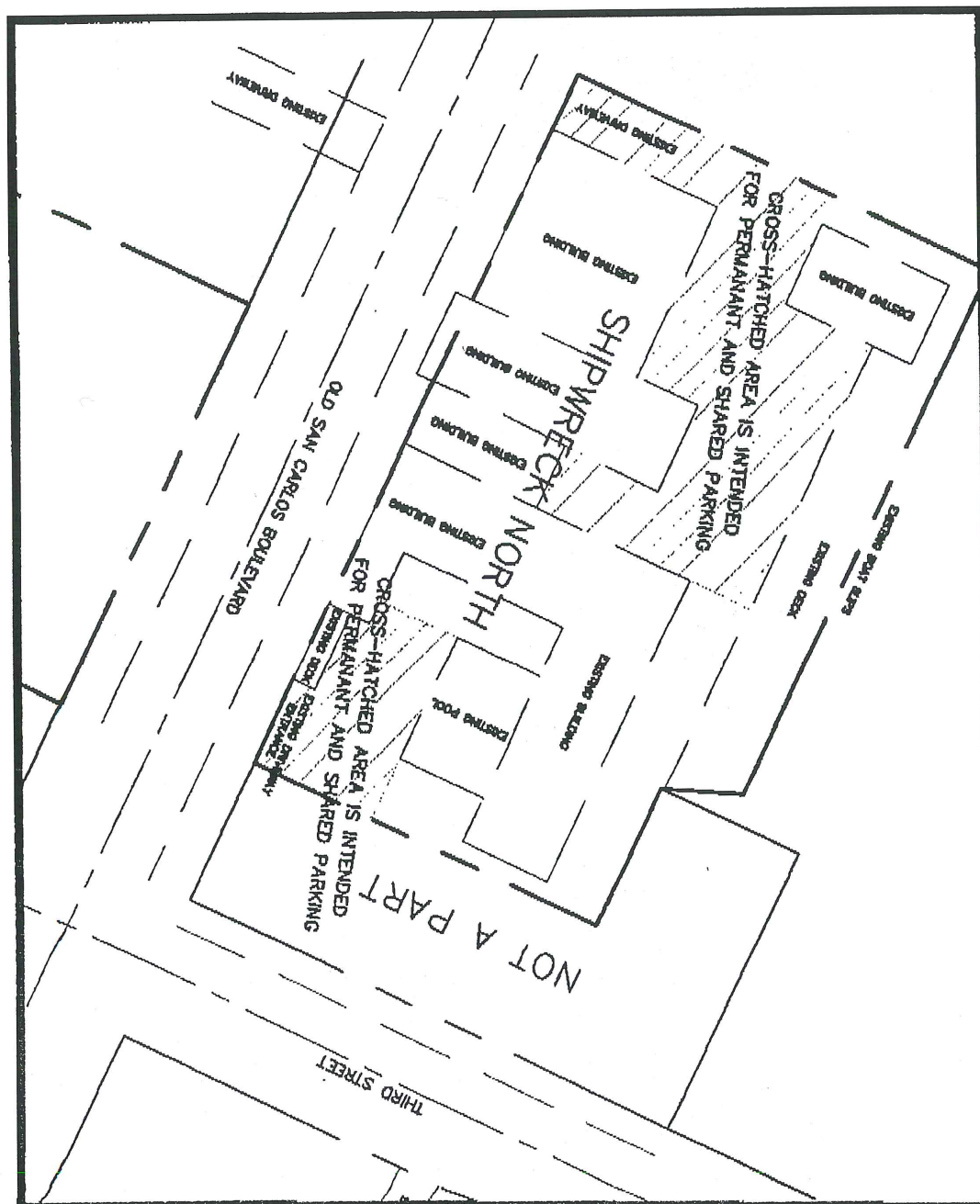
EXHIBIT A
SHIPWRECK NORTH
PERMANENT SHARED PARKING EXHIBIT-FUTURE
JOHN RICHARD
FORT MYERS BEACH, FL



1" = 50'

SOURCE: TON. 12/13

EXHIBIT A
SHIPWRECK NORTH
PERMANENT SHARED PARKING EXHIBIT—CURRENT
JOHN RICHARD
FORT MYERS BEACH, FL
Special Exception


$$1'' = 50'$$

MEMO

TO: Walter Fluegel, Director of Community Development
 Leslie Dulmer, Zoning Coordinator

FROM: Beverly Grady

DATE: December 12, 2013

RE: Review of Shipwreck North and South parcels application; Additional Request

This memorandum sets forth the areas to confirm with the Town and the second part sets forth variance relief, an additional special exception, and overhang permission to be included in the application.

Confirmation with Town:

1. Downtown zoning district is exempt from one (1) tree per 3,000 square feet requirement (10-416[a]).

2. Confirm that Old San Carlos Boulevard (OSC) where the building is at the build-to line of zero feet (0') for front and side is exempt from building edge plantings requirement of 10-416(b).

3. Although 10-416(c) Landscape qualifies for administrative deviation from staff without a public hearing, staff urged adding relief to this public hearing application.

The Code provides that existing parking in Downtown zoning district may remain "as is" and no compliance is required with Section 10-416(c) unless and until there is:

new off-street parking or vehicular area (new includes expansion or alteration of vehicular use area) OR expansion of building square footage.

4. Confirm that driveway width pursuant to 34-2013 is twenty feet (20').

5. Confirm that existing access as it exists is approved and no variance or relief is needed for existing access on to OSC from either the North parcel or the South parcel and confirm that Section 10-285 "Separation of Access" distance on roads does not apply to OSC which is defined as a "primary" road by the Land Development Code where Section 10-285 only applies to "major" streets.

6. Confirm there is no minimum open space requirement pursuant to Section 34-677(b) in Downtown and no minimum buffer in Downtown (except when parking is adjacent to right-of-way).

7. Confirm the minimum parking calculations in 34-2020 for a multiple occupancy complex which is 5 or more uses on a parcel where the calculation is as follows:

25% or less restaurant = 2 spaces per 1,000 SF
25%-50% restaurant = 4 spaces per 1,000 SF
50%-75% restaurant = 6 spaces per 1,000 SF
Over 75% restaurant - 8 spaces per 1,000 SF

Therefore if the North parcel has 5 tenants or commercial unit owners, the above calculation is appropriate. If there are less than 5 businesses, then each business is calculated on an individual parking calculation.

8. Confirm pursuant to Section 34-2011(b) that "shared parking" lots are opened to the public regardless of designation. Although one must show that the parcel has the required number of parking spaces pursuant to the Code, the approval of "shared parking" by special exception authorizes use of those parking spaces by the public regardless of destination.

9. Confirm that a single dumpster on one parcel may serve several parcels without any additional approval from the Town other than showing the location of the dumpster on a Chapter 10 development order site plan. Confirm that there are no other regulations regarding dumpster other than Section 10-257.

BG/ro
Attachment

Shipwreck Variances and Special Exception Request

Variance from LDC 10-416 Landscape:

- (c) When building square footage increases or vehicle parking/use is expanded or altered, a variance from the following internal parking requirements to no internal requirements are requested for North and South parcels:

- 2(a) no tree requirement internally
- 2(b) no landscape islands
- 2(c) no 10' minimum width of islands
- 2(d) no requirement for every 10 spaces
- 2(e) no median required
- 2(f) interior landscape
- 2(g) tree grates

- (d) VAR2013-0007 Perimeter buffer. A variance is already requested from 34-677(b)(3) for no buffer between off-street parking and right-of-way and this Section with Table 10-8 is listed in an abundance of caution as it is included by reference in the Chapter 34-677 variance request.

Variance from 34-2016(1) and (2) Dimensions to:

Angle	Parking Spaces	One-Way Aisle	Two-Way Aisle
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

Variance from 34-676 Parking in Downtown. (VAR 2013-0007)

- (b) Parking lot location to permit parking in front and side yards (already requested); and

- (c) No rear yard connection required between private property.

Variance from 34-677(b) - buffer between parking on side/front and right of way (already requested) (VAR 2013 - 0007)

Add - Request for overhang permission over right of way pursuant to Section 34-674(a)(4).

Add - Request special exception for permanent shared parking on Shipwreck North and South parcels. Valet parking approval is requested for North and South parcel.

Variance from Section 34-662 (b) and Section 34-3131 for reduced visibility triangle requirements as set forth in sketch for access onto Third Street due to SOB's existing approval for a structure in right of way.

From: Grady, Beverly
To: Leslie Duimer; jwr@embarqmail.com
Subject: Shipwreck and Matanzas
Date: Thursday, December 12, 2013 5:51:21 PM

Shipwreck
A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2 (a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2 (d) no landscape every 10 space requirement; 2(e) no median required ; 2(f) no interior landscape of sod and grass and 2 (g) no tree grates

A variance from Section 34-2016 (1) and (2) parking dimensions to allow:
Angle Parking Spaces One Way Aisle Two Way Aisle
(Leslee details for each angle in request sent this morning)
A variance from LDC Section 34 – 676 (b) to allow parking within front and side yards and (c) to allow no rear yard connection between subject property and adjacent property
A variance from LDC 34 – 677 (b) ; Table 10-8; Section 10-416 (d) requiring buffer between parking and ROW to allow zero buffer
A variance from Section 34-622 (b) and 34-3131 from visibility triangle to allow reduced triangle for access to Third Street pursuant to sketch due to Town approval of SOB structure in right of way
Request special exception for permanent shared parking on North parcel and south parcel
Request permission for building overhang into right of way pursuant to Section 34-674 (a) 4

From: Leslie Duimer [mailto:leslee@fortmyersbeachfl.gov]
Sent: Thursday, December 12, 2013 4:36 PM
To: Grady, Beverly; jwr@embarqmail.com
Subject: Shipwreck and Matanzas

Beverly,
I got the files for both the Shipwreck parcel (237) and the Matanzas parcel (440), thank you.
However, in reading through the last page it is really not clear what you are requesting the variance **to allow**. Can you provide a list of each specific code section and what you are requesting to allow, for example:

A variance from LDC Section 10-416(c) to allow _____
A variance from LDC Section 34-676(b) to allow _____

Etc.

I can't continue/begin to review these additional elements (or advertise them for that matter) without a clear picture of what the end result is you are seeking.

Please contact me if you have any questions.

Thanks,

Leslee Dulmer

Zoning Coordinator

Town of Fort Myers Beach

2523 Estero Boulevard

Fort Myers Beach, FL 33931

Phone: 239-765-0202 ext 105

Fax: 239-765-0591

We value your opinion and would ask that you take a minute to complete a survey regarding our Customer Service at the following link: <http://www.surveymonkey.com/s/6T2P9DC>



Think Green. Please print this e-mail only if necessary.

Please Note: Florida has very broad public records laws. Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications may be subject to public disclosure.

Any federal tax advice contained herein or in any attachment hereto is not intended to be used, and cannot be used, to (1) avoid penalties imposed under the Internal Revenue Code or (2) support the promotion or marketing of any transaction or matter. This legend has been affixed to comply with U.S. Treasury Regulations governing tax practice.