

COPY

County Resolution #Z-89-074

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

WHEREAS, John J. Hynes, Jr., Trustee, in reference to Pelican Restaurant, has properly filed an application in the MH-2, CT and C-1 districts for:

- a) A rezoning from the MH-2 to CT; and
- b) A variance from the required 146 parking spaces [Section 202.16.J. 2.1.3.(b).], to allow 113 parking spaces; and

WHEREAS, the subject property is located at 3040 Estero Blvd. and 3056 Estero Blvd., Fort Myers Beach, described more particularly as:

LEGAL DESCRIPTION: In Section 29, Township 46 South, Range 24 East, Lee County, Florida:

Schedule "A"

Lots 20, 21, 22, 23 and 24, of Case's Subdivision, as recorded in Plat Book 1, at Page 58, of the Public Records of Lee County, Florida; and commonly known as 3040 Estero Boulevard, Fort Myers Beach, Florida; AND Lot 25, and the Easterly 40.87 feet of Lot 26, Case's Subdivision, according to the Map or Plat thereof, on file and recorded in the Plat Book 1, at Page 58, and commonly known as 3000 Estero Boulevard, Fort Myers Beach, Florida.

Above described lands lying in Section 29, Township 46 South, Range 24 East, Lee County, Florida.

Parcel "B"

Being a portion of Lots 24, 25 and 26 of the Case Subdivision as recorded in Plat Book 1, Page 58, Lee County Public Records, Section 29, Township 46 South, Range 24 East, Lee County, Florida;

CONTAINING 0.70 acres of land more or less.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 29-46-24-01-00000.0200; 29-46-24-01-00000.021B;

29-46-24-01-00000.0220; 29-46-24-01-00000.0250; and

WHEREAS, proper authorization has been given to James T. Humphrey of Humphrey & Myers, P.A., by John J. Hynes, Jr., the Trustee of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available; and

WHEREAS, the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on July 25, 1989; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners; and

WHEREAS, in the legislative process the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE:

- a) A rezoning of Lot 20 only from MH-2 to CT; and
- b) A variance on the entire parcel from the required 146 parking spaces, to allow 113 parking spaces, subject to the condition that the variance be valid ONLY for the existing use as shown on the site plan filed in connection with the case.

Site Plan 89-074 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

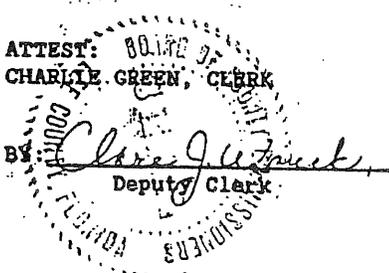
The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Ray Judah, and seconded by Commissioner John E. Manning and, upon being put to a vote, the result was as follows:

John E. Manning	AYE
Charles L. Bigelow, Jr.	AYE
Ray Judah	AYE
Bill Fussell	ABSENT
Donald D. Slisher	AYE

DULY PASSED AND ADOPTED this 11th day of September, A.D., 1989.

ATTEST: BO. 11/25/89  
CHARLE GREEN, CLERK

BY: Charles J. Green  
Deputy Clerk



BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: C. L. Bigelow  
Chairman

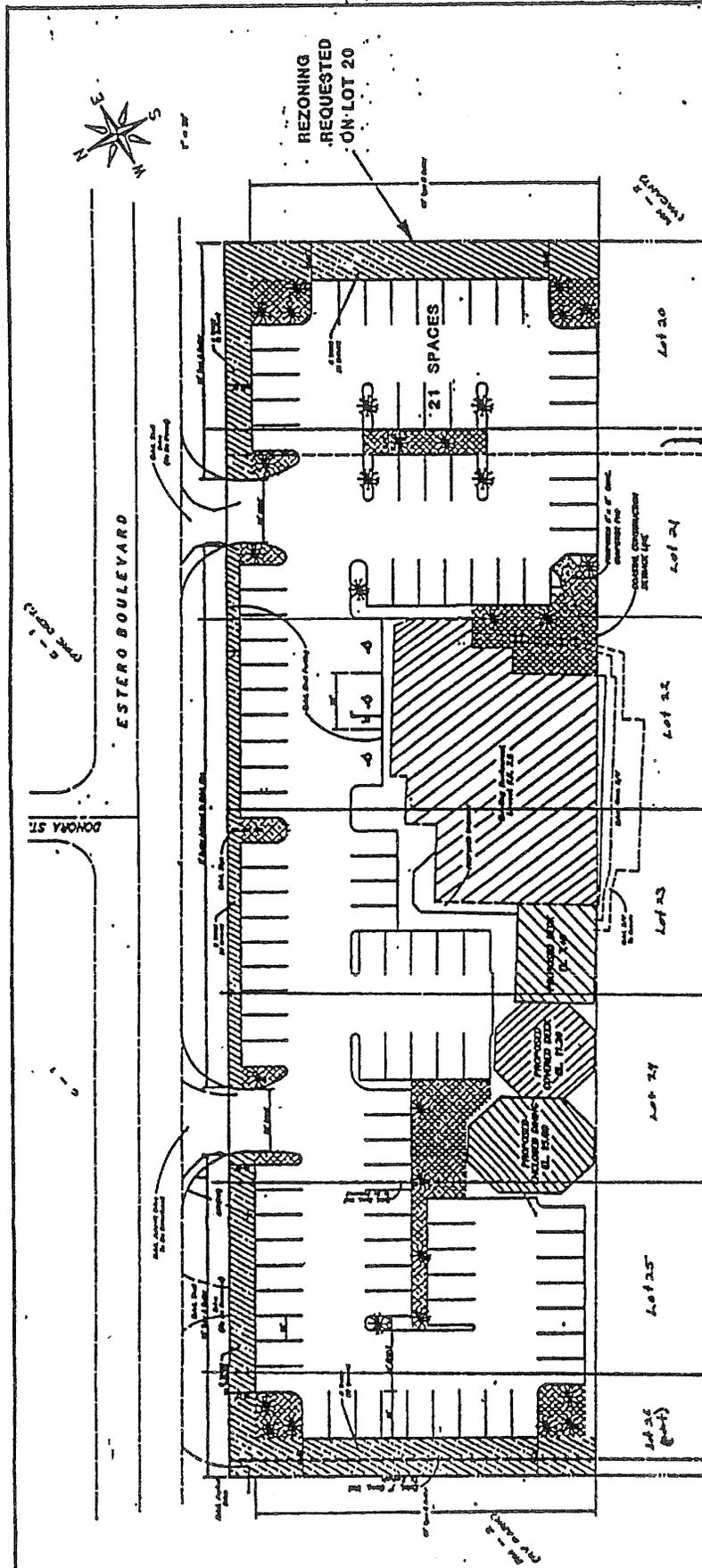
Approved as to form by:

Samuel J. Pore  
County Attorney's Office

**FILED**

OCT 25 89

CLERK CIRCUIT COURT  
BY C. W. Duck, D.C.



**SITE PLAN: THE PELICAN RESTAURANT  
PROPOSED EXPANSION**

- REQUEST a) REZONE LOT 20 TO CT
- REQUEST b) VARIANCE FOR PARKING ON  
LOTS 20 THROUGH 26  
AND PART OF 26

# Hearing Examiner Decision

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL PERMIT: CASE 90-1-18-SP-1  
APPLICANT: JOHN J. HYNES, JR., TRUSTEE, for THE PELICAN RESTAURANT  
HEARING DATE: January 18, 1990

I. APPLICATION:

Filed by JOHN J. HYNES, JR., TRUSTEE, c/o JAMES T. HUMPHREY, HUMPHREY & KNOTT, P.A., 1625 Hendry Street, Suite 301, Ft. Myers, FL 33901 (Applicant/Agent).

Request is for a special permit in the CT & C-1 districts for consumption on premises (Section 202.03). The applicant is expanding the existing beverage license to include outdoor seating.

The subject property is located at 3040 Estero Blvd., Fort Myers Beach, in Section 29, Township 46 South, Range 24 East, Lee County, Florida. (District #3)

II. STAFF RECOMMENDATION: APPROVE WITH CONDITIONS

The Department of Community Development Staff Report was presented at the hearing by Pamela Houck. The staff report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION: APPROVE WITH CONDITIONS

The undersigned Lee County Hearing Examiner approves the Applicant's request for a Special Permit in the CT & C-1 districts for consumption on premises for the real estate described in Section VII. Legal Description except that the Special Permit shall be approved ONLY subject to the compliance by the Applicant, and its successors in interest, with each of the following conditions:

1. The special permit shall be limited to a 4-COP-SRX beverage license in conjunction with a Group III restaurant only; and
2. The location at which the special permit is valid shall be limited to the existing restaurant facility and the proposed additions shown on Attachment C.

PUBLIC PARTICIPATION: The following persons appeared at the hearing or became "parties of record" in this case by submitting written materials:

APPLICANT'S REPRESENTATIVES:

1. Mrs. Lori A. DUTRA, Humphrey & Knott, P.A., 1625 Hendry St., Suite 301, Ft. Myers, FL 33901
2. Mr. Fred RUSSO, The Skipper's Gallery (formerly The Pelican Restaurant), 3040 Estero Blvd., Ft. Myers Beach, FL 33931

FOR: NONE

AGAINST:

1. Ms. Johanna P. SEYBOLD, 1502 Edgewater Cir., Ft. Myers, FL 33919  
Letter 1/11/90: As a property owner in close proximity to the Pelican Restaurant, I am writing to you with my concerns regarding this case. Apparently the Pelican Restaurant wishes to serve alcoholic beverages in their expanded area "under roof" as well as out in the "open air". I believe they are requesting a permit to serve alcoholic beverages from 8 a.m. until 2 a.m.

I don't object to people drinking cocktails "under roof". However, I do strongly object to drinking alcoholic beverages outside. The sun in Florida is very strong as you know and people do get thirsty

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especially with our heat. I am afraid that there may be a temptation for others to carry drinks with them and serve them to minors, and to drink more than they normally would because of the Pelican's convenient location to the beach.

We have a serious problem in Florida and across the nation with drinking and driving. Let's not add to it. I feel that by allowing alcoholic beverages to be served "outside" would contribute to not only a possible drinking and driving problem but also may contribute to conduct not becoming an area of residential homes -- an area where families are raising children.

Along with the "outside" consumption my very likely come bands and music...and lots of noise until 2 a.m. Residents are now experiencing this problem at the north end of the island.

I am not opposed to the Pelican Restaurant expanding their license to allow consumption of alcoholic beverages in their new larger quarters. That's fine. I am, though fiercely opposed to them selling alcoholic beverages indiscriminately all day and into the wee hours of the morning "outside". Along with this comes problems. We have enough problems on the beach -- let's not add to them.

I'd suggest we keep the Pelican Restaurant the fine establishment it has been for years and years. Let it cater to a better quality of clients than "beach bums". Thank you for considering my request.

2. Mr. Gordon J. TAYLOR, President, Gulfview Colony, Inc., 2945 Estero Blvd., Ft. Myers Beach, FL 33931

Comment Card: We are greatly concerned about the volume of traffic, noise and loud and unruly people who will be brought into our normally rather peaceful environment. We have been a senior citizens establishment in this area for over 20 years.

Testimony: Represents Gulfview Colony, Inc. This was established by senior citizens. It is like a condo and has cooperative ownership. They have been in this location for over 20 years and have 57 units or families. He further stated that, according to Mr. Russo's description of what The Pelican wished to established, that he didn't believe this would hurt the beach or them. They are worried about something developing which is comparable to what is around the pier with the music, if you can call it music, and its volume. No one would like to see an establishment like the main square next to their living quarters. This is their concern, not if it is run as it was described today. The concern was over the word "outdoor." There is a tiki lounge on the beach, and while "tiki" is a nice soft word, if you go down by the pier, that atmosphere is destroyed right away.

You can look around and realize there is a different generation. Some of them have lived in this park for over 20 years. It is the neighborhood concept they are worried about. They weren't even worried until the tiki lounge concept was brought up. They are worried about the destruction of the peaceful nature of their environment. He doesn't believe there is anything they can do about it, they simply wanted to make their thoughts known. Perhaps the management will, when they get the acceptance of their desires, consider the people who live around them.

GENERAL: NONE

V. STAFF PRESENTATION:

Pam Houck presented the staff report and stated that this is a request by The Pelican Restaurant for a special permit in CT & C-1 districts for consumption on premises. The subject property is located at 3040 Estero Boulevard on Fort Myers Beach, across the street from the fire station, and near the Red Coconut RV Park.

The applicant has requested the the 4-COP-SRX special permit due to a proposed expansion to the existing restaurant. Currently a restaurant is existing and operating on the site and the applicant holds a 4-COP-SRX license.

The applicant recently expanded the restaurant with open decks and open seating. County regulations require that to have open seating and serve liquor in that open area, a special permit is required.

The restaurant is located on a 2.8 acre site. Exhibit C of the staff report shows the site plan that was adopted pursuant to the recent variance and parking request. The special permit is requested only for lots 21, 22, 23, 24 and 25, which encompasses the building. It does not include the parking lots. This limits the area of consumption on premises. If the restaurant wishes to further expand at a later date, they would have to apply for another special permit. In general, the County limits the COP to the boundary of a building. The applicant submitted a legal that only includes these lots. approved and the Board also approved just this site plan previously. This policy protects adjacent property owners.

The applicants are not putting in a bar in the building. This would require an additional special permit. The cocktails can only be served to diners. Mrs. Houck was not sure if someone could legally take a drink out onto the beach or not.

Staff has recommended approval of the request with two conditions. The special permit is limited to the 4-COP-SRX beverage license in conjunction with a Group III restaurant. That limits it to service with a full course meal. The second condition limits the special permit to the site plan attached to the Staff Report as Exhibit C.

The request is consistent with the Lee Plan and consistent with the standards for approval of a special permit. The conditions will make this more compatible with the surrounding area.

VI. APPLICANT PRESENTATION:

Lori Dutra, an attorney representing the owners and applicants, stated that they agree with the staff recommendation and conditions. She introduced Mr. Fred Russo, one of the owners and managers.

There is no expansion of the structure by virtue of this special permit. It is a COP for the outdoor seating area and is required by County ordinance to be specially granted. The outdoor seating area has not been built yet. When it is built, the restaurant would not be able to serve alcoholic beverages, in the open seating area, without this special permit. This permit is to allow the restaurant to serve alcoholic beverages to guests that are eating and to guests that are waiting to be seated to eat at the restaurant. This will be incorporated into the overall restaurant and will not be a cocktail lounge. It is simply part of the restaurant itself.

In response to a question by the Hearing Examiner, Mrs. Dutra stated that the restaurant needs a place in the restaurant for people to sit and wait for a table. They would be able to order a drink and take it with them to their dinner. The restaurant would not advertise this as a lounge for people to simply come in to drink. It would be for the patrons of the restaurant.

Mr. Russo stated that The Pelican Restaurant has been there for a long time. It has always been a formal place to dine. They have made it even more formal. Their staff and management are well trained. They are not going to be opening the restaurant back up to make a lounge of it. It is mainly a restaurant business. They are also going to try to open for lunch. They feel it is important to have an outside luncheon and activity area on the beach. They are also going to try to have a room called the "breakfast room" where they will have ice creams, coffees, and donuts. This will be nice for families to come in and have ice cream and walk out onto the deck and sit down and watch the sunset and the beach.

With lunches and dinners, they need to be able to serve alcoholic beverages on the premises. They cannot have people go inside and have a drink, and then go outside only after dinner, so that the whole function of the restaurant is "only one at any given time." They would not allow "cheap" clientele to come over and destroy what they are trying to do because that would destroy the restaurant itself.

In response to questions by the Hearing Examiner, Mr. Russo stated that a dinner would average \$25 to \$50 per person. Lunch would average \$10 per person. Beer would be \$2.50 for domestic and \$3.25 for imported. Drinks are from \$3.50 to \$4.95. They are trying to attract a specific type of clientele. He provided a picture of the staff and the restaurant.

Mr. Russo stated, in response to Mr. Taylor's comments, that this was one of their concerns also, and they were never going to make that happen on their property. They would never have spent all this money and made it look this way, and then turn around and destroy everything they have worked for. This is not just Mr. Taylor's concern, it is their's also.

VII. LEGAL DESCRIPTION:

In Section 29, Township 46 South, Range 24 East, Lee County, Florida:

Lots 21, 22, 23, 24 and 25, Case's Subdivision, as recorded in Plat Book 01, page 58, of the Official Records of Lee County, Florida, lying in Section 29, Township 46 South, Range 24 East, Lee County, Florida.

VIII. FINDINGS AND CONCLUSIONS:

Based upon the staff report, the testimony and exhibits presented in connection with this matter and personal inspection of the site, the undersigned Hearing Examiner makes the following findings and conclusions:

A. There is no negative impact on the intent of the Zoning Ordinance as a result of the granting of the Special Permit, as conditioned.

B. That the granting of the Special Permit, as conditioned, is consistent with the goals, objectives, policies and intent of the Lee Plan, as last amended.

C. That the Special Permit, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use.

D. That the Special Permit, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan.

E. That granting the Special Permit, as conditioned, will protect, conserve and preserve environmentally critical areas and natural resources.

F. That after full consideration of this matter and the nature of the use presently being made of the premises, it is clear to the Hearing Examiner that the Special Permit, as conditioned, will be compatible with existing or planned uses and will not cause damage, nuisance, hazard or other detriment to persons or property.

G. That the location of the requested Special Exception does not place 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 use(s) which will be developed in conjunction with the Special Exception.

H. That the requested use is in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in the Lee County Zoning Ordinance, as last amended.

I. That granting the requested Special Permit, as conditioned, is not contrary to the public interest, public health, public safety, public convenience or public welfare of the citizens of Lee County.

J. The real estate which is the subject of this Special Exception is correctly described in Section VII. Legal Description.

IX. APPEALS:

This decision will become final on February 14, 1990, unless the Lee County Board of County Commissioners assumes jurisdiction of this matter pursuant to Chapter IX of the Lee County Zoning Ordinance, as last amended. After the decision becomes final, all appeals must be taken to Circuit Court.

X. COPIES OF TESTIMONY AND TRANSCRIPTS:

A. Expanded summaries of the testimony presented at the hearing are available upon request at the Office of the Lee County Hearing Examiner, 2115 Main Street, Fort Myers, Florida. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the Official Court Reporter, 20th Judicial Circuit, Lee County Justice Center, Fort Myers, Florida. The original documents and original file in connection with this matter are located at the Lee County Department of Community Development Office, 1831 Hendry Street, Fort Myers, Florida.

B. THE ORIGINAL FILE AND THE ORIGINAL DOCUMENTS USED AT THE HEARING WILL REMAIN IN THE CARE AND CUSTODY OF THE DEPARTMENT OF COMMUNITY DEVELOPMENT. THE DOCUMENTS ARE AVAILABLE FOR EXAMINATION AND COPYING BY ALL INTERESTED PARTIES DURING NORMAL BUSINESS HOURS.

This decision is rendered this 30th day of January, 1990. Copies of this decision will be delivered immediately to the offices of:

Commissioner John E. Manning  
Commissioner District #2  
Commissioner Ray Judah  
Commissioner Bill Fussell  
Commissioner Donald Slisher



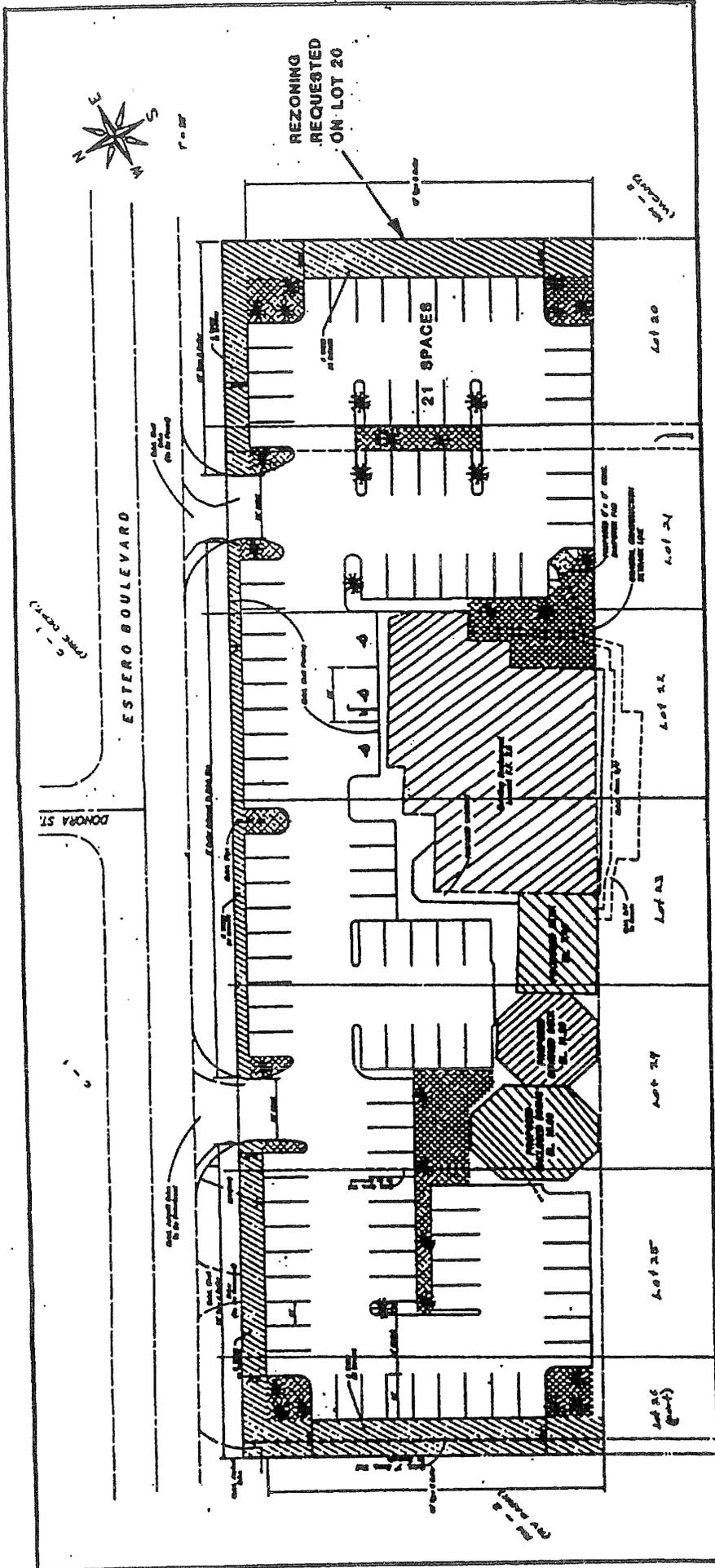
RICHARD SCOTT BARKER  
LEE COUNTY HEARING EXAMINER  
2115 Main Street  
Post Office Box 398  
Fort Myers, FL 33902-0398  
Telephone: 813/335-2241

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**I M P O R T A N T  
A P P E A L R I G H T S**

ANY interested person has the right to request that the Lee County Board of County Commissioners take the file and the record made by the Lee County Hearing Examiner in this case and make a decision in this matter which would REPLACE the decision of the Hearing Examiner set out above in this document.

This RIGHT LASTS ONLY UNTIL THE DECISION BECOMES FINAL. This date is set out above in this decision. If you are interested in taking advantage of this procedure TWO Commissioners MUST request that the Lee County Board of County Commissioners take jurisdiction of this case. You must accomplish this before the date the decision becomes final. Each County Commissioner is given a form attached to each decision to use for this purpose.

If you need additional information concerning your rights and the requirements in connection with this procedure you may contact the Lee County Hearing Examiner's Office (813/335-2241).



**SITE PLAN: THE PELICAN RESTAURANT  
PROPOSED EXPANSION**

- REQUEST a) REZONE LOT 20 TO CT
- REQUEST b) VARIANCE FOR PARKING ON LOTS 20 THROUGH 25 AND PART OF 26