

1. Requested Motion:

Meeting Date: May 7, 2012

Commercial Planned Development (CPD) Amendment to expand the existing CPD, formerly known as Big John's Board Walk Eatery, which was approved per Resolution No. 06-30.

Why the action is necessary:

This action will allow the applicant to provide for required parking on-site for the existing restaurant uses, eliminate back out parking onto Estero Boulevard, provide for improvements to the subject property's stormwater management, and provide landscape buffers and screening.

What the action accomplishes:

2. Agenda:

Consent
 Administrative
 Public Hearing

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff – Comm. Dev.
 Town Attorney

5. Background:

In 2006 the previous owners of the property located at 2301 Estero Boulevard applied for a rezoning from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow for the conversion of an existing 4,000 square foot building from office uses to restaurant uses. The application was denied by Town Council after public hearing in May of 2006. The applicant and the Town went through the FLUEDRA (Future Land Use and Environmental Dispute Resolution Act) process and reached a compromise that included a revised Master Concept Plan (MCP) showing an additional outdoor dining area of 1,000 ± square feet. Town Council adopted Resolution 06-30 in December of 2006, memorializing this compromise.

Ownership of the subject property changed in 2011 and the current property owner also acquired adjacent property located at 2311 Estero Boulevard, 111 Mango Street and 121 Mango Street. This increase in land area under unified control has allowed the property owner to now provide on-site parking for the existing building.

This application seeks to amend and expand the existing CPD, to provide that on-site parking for the existing building, eliminate back out parking onto Estero Boulevard in addition to providing improved stormwater management and landscape buffers and screens.

The LPA held a public hearing for the request at their April 10, 2012 meeting. The applicant presented their case then Staff presented its case along with a recommendation for approval including 11 deviations with approval subject to six (6) conditions. LPA conducted a question and answer period and discussion before voting 7-0 to approve the request. LPA's approval acknowledged the same 11 deviations but included three additional conditions.

The applicant submitted a revised Master Concept Plan (MCP) and schedule of deviations on 4/25/12. These revisions reflect comments from the LPA meeting and have resulted in the elimination of one recommended condition of approval.

Please note that the meeting minutes from the April 10, 2012 LPA meeting are still in draft form and have not been officially approved by the LPA.

Attachments:

- Draft Town Council resolution
- Staff Report – including a LPA meeting update
- Revised MCP and schedule of deviations submitted by applicant on 4/25/12
- LPA resolution 2011-005
- Draft LPA minutes from the April 10, 2012 meeting
- Master Concept Plan and schedule of deviations considered by the LPA at their April 10, 2012 meeting. The balance of the CPD application is available for review with the Town Clerk.

6. Alternative Action:

1. Deny the requested rezoning
2. Approved the requested rezoning subject to alternative conditions

7. Management Recommendations:

Approve the requested amendment to the Commercial Planned Development and requested deviations subject to the conditions recommended in the Staff report and LPA Resolution 2012-005.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 12-07
EAGLE EQUITY CAPITAL CPD

WHEREAS, Eagle Equity Capital, LLC, owner of property located at 2301 and 2311 Estero Boulevard and 111 and 121 Mango Street Fort Myers Beach, Florida has requested an amendment to expand the existing Commercial Planned Development (CPD), formerly known as Big John's Board Walk Eatery, to provide required parking on-site for the existing restaurant uses, stormwater management improvements, and landscape buffers as shown on **Exhibit A**; and

WHEREAS, the subject property is located in the both the Boulevard and Mixed Residential and Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP for the properties are 19-46-24-W3-0110D.0010, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020 and 19-46-24-W3-0120E.0030; and

WHEREAS, the legal description for the properties are Lots 1 and 2, Block D of Beach Estates subdivision, according to the plat thereof recorded in Plat Book 6 Page 68, and Lots 1, 2, and 3, Block E of Seagrape subdivision, according to the plat thereof recorded in Plat Book 4 Page 17 of the Public Records of Lee County, Florida; and

WHEREAS, the Town Council, on December 18, 2006, adopted Resolution 06-30 which rezoned the subject property from Commercial Boulevard (CB) to Commercial Planned Development (CPD); and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 10, 2012 at which time the LPA gave full and complete consideration to the CPD amendment requested by the Applicant, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on May 7, 2012, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2012-005, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2012-005 and the standards for granting planned development rezoning, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES/DENIES** the applicant's request for an amendment to the existing CPD, formerly known as Big John's Board Walk Eatery, to provide required parking on-site for the

existing restaurant uses, stormwater management improvements, and landscape buffers, with such approval subject to the **8 conditions** and **11 deviations** set forth with specificity below.

CONDITIONS OF APPROVAL:

1. If the principal building on the subject property (2301 parcel) is removed or replaced for any reason, deviations 3, 4, 5, 6, and 7 will become null and void. Any new buildings replaced on the subject property must comply with required setbacks and any other regulations in effect at the time of permitting.
2. Any changes or fracturing of ownership of the four parcels within the subject property will require, at a minimum, an administrative amendment to the Mast Concept Plan to reflect the change in ownership, which will include recorded unified control documentation.
3. The parking lot must be stabilized in accordance with the provisions in Section 34-2017(b)(1).
4. A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees.
5. Should Town Council determine that the Traffic Impact Statement Waiver is not warranted and the application may place an undue burden on road facilities, based upon Staff analysis, then Town Council should consider the following conditions to mitigate those impacts, including a Traffic Impact Statement:
 - a. Require the applicant to amend the Master Concept Plan to reduce the outdoor dining square footage to 1,000 square feet, consistent with the prior approval in Resolution 06-30 and maintain Condition 5, as worded above; and/or
 - b. Require the applicant to provide a Traffic Impact Statement that demonstrates the proposed CPD amendment meets concurrency for review and approval by Town Council. In the event the Traffic Impact Statement demonstrates that the proposed CPD amendment does not meet concurrency standards, the applicant shall provide a Traffic Impact Mitigation Plan to assess mitigation strategies, including the feasibility of providing an easement on the subject property for a future trolley stop and shelter, as a mitigation strategy. The Traffic Impact Mitigation Plan and any requisite amendments to the Master Concept Plan would then require review by the Local Planning Agency and approval by Town Council to effectuate the rezoning; and/or
 - c. Require the applicant to provide an easement for a future trolley shelter for the triangular shaped area labeled on the Master Concept Plan as "Trolley Stop Bench on Concrete" as a means of mitigating the requested parking reduction deviation.

LPA RECOMMENDED CONDITION 5:

5. *A Traffic Impact Study (TIS) is not warranted and Town Council hereby overrules the Director's decision to require a TIS. The applicant has provided mitigation for traffic impacts by providing the following: additional on-site parking for tenants and customers, landscape buffers, bicycle racks, extension of the sidewalk along Estero Boulevard in front of the property, elimination of the back out parking in front of the existing building, a reduction in the outdoor dining area to 1,000 square feet, and provision of storm water management improvements. The current restaurant use has demonstrated that it is mainly a pedestrian*

and bicycle oriented destination and, as a result, the traffic impacts may actually be less than would be expected from a traffic impact study.

6. Bicycle racks shall be provided for a minimum of 8 bicycles.
7. The hours of operation for business use are 6am to 12 midnight. The hours of operation for indoor restaurant uses are 7am to 12 midnight with outdoor seating area limited to between the hours of 7am and 10 pm, seven days a week.
8. No outdoor entertainment is permitted.

APPROVED DEVIATIONS:

Deviation #1

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14-15 foot Type C buffers without a wall, as indicated on the MCP and landscape plan.

APPROVE/DENY

Deviation #2

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15 foot Type D buffer between parking areas and right-of-way, to allow for a 5 foot Type D buffer between parking areas and right-of-way.

APPROVE/DENY

Deviation #3

Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building.

APPROVE/DENY

Deviation #4

Deviation from the requirements of LDC Section 34-707(b)(1)a, which requires a minimum 10 foot street setback to allow for a 2.39 foot street setback from Fairweather Lane to accommodate the existing building.

APPROVE/DENY

Deviation #5

Deviation from the requirement of LDC Section 34-704(b)(1)b, which requires a minimum 20 foot rear setback, to allow for a two-foot rear setback to accommodate the existing building.

APPROVE/DENY

Deviation #6

Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal façade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal façade to be 16 feet in length.

APPROVE/DENY

Deviation #7

Deviation from the requirements of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane.

APPROVE/DENY

Deviation #8

Deviation from LDC Section 34-2020(d)(2)h, which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 47 required parking spaces) to allow for a 30% reduction from the LDC requirement for a total of 34 provided spaces.

APPROVE/DENY

Deviation #9

Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.

APPROVE/DENY

Deviation #10

Deviation from LDC Section 34-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96± feet of connection separation along Mango Street.

APPROVE/DENY

Deviation #11

Deviation from LDC Section 10-289(d) which requires an 8 foot wide sidewalk along the property's Estero Boulevard frontage, to allow for a 5 foot wide sidewalk.

APPROVE/DENY

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 the planned development zoning approval, the Town Council makes the following findings and reaches the following conclusions:

1. *An error or ambiguity **does/does not** exist which must be corrected.*
Resolution 06-30 did not specifically address parking for the restaurant uses as an on-site condition. This ambiguity in on-site parking requirements is being addressed and corrected with the proposed amendment to the CPD.
2. *Changed or changing conditions **do/do not** exist which make approval of the request appropriate.*
A single property owner has acquired all four parcels, 2301 and 2311 Estero Boulevard and 111 and 121 Mango Street, which comprise the subject property. This change in ownership allows for the required parking on the 2301 parcel to effectively be accommodated on-site. However, in order to permit an increase of commercial uses on parcels within the Boulevard and Mixed Residential FLU categories, a commercial planned development rezoning or amendment is required.

3. *There **will/will not** be an impact from the proposed change on the intent of Chapter 34.*

The proposed amendment to the CPD will implement the provisions found in Section 34-702, the Commercial Boulevard zoning district, which requires rezoning to Planned Developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code.

4. *Whether the request **is/is not** 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.*

The requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Boulevard and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process.

5. *Whether the request **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use.*

The request to amend the CPD for 2301 Estero to include land at 2311 Estero, 111 Mango and 121 Mango meets and exceeds all performance and locational standards for the proposed uses. No new structures or substantial improvements are proposed, therefore the Commercial Design Standards that are found in Section 34-991 and subsequent sections of the LDC do not apply. Furthermore, the proposed amendment is consistent with Policy 4-C-2 which requires that commercial uses in the Boulevard and Mixed Residential FLU be designed to contribute to the pedestrian experience and to provide services for overnight guests and residents.

6. *Whether urban services **are/are not**, or **will/will not** be, available and adequate to serve a proposed land use change.*

The applicant has provided Letters of Availability from Beach Water and Lee County Utilities, demonstrating water and sewer service capacity and availability.

7. *Whether the request **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources.*

As existing commercially developed and vacant lots located on interior parcels of land away from both the Matanzas Pass waterfront and the Gulf of Mexico and beach, the subject property does not include any sensitive and/or environmentally critical lands. However, any lighting visible from the beach and/or included on development order plans will be required to meet all applicable environmental codes including, but not limited to, Sea Turtle lighting requirement as found in LDC Section 14-79.

8. *Whether the request **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.*

The property owner has recently made façade improvements and repairs to the existing building on the subject property. The CPD amendment proposes additional improvements and installations that will have a significant positive impact on the pedestrian experience, resident and visitor alike, and the overall aesthetic appeal of the subject property. Elimination of back out parking, installation of landscape buffers, and opportunity for new business ventures will serve to enhance the immediately surrounding area. The redevelopment of the subject property will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.

9. *Whether the location of the request **will/will not** place an undue burden upon existing transportation or other services and facilities and **will/will not** be served by streets with the capacity to carry traffic generated by the development.*

The increase of trips from the prior approval of Resolution 06-30 is 6.43 peak hour trips. However, the site design improvements that accompany the requested CPD amendment demonstrate a significant improvement to bicycle and pedestrian safety and contribute to the overall positive visual appearance along the subject property's Estero Boulevard frontage.

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

Larry Kiker, Mayor	AYE/NAY	Bob Raymond, Vice Mayor	AYE/NAY
Alan Mandel, Councilmember	AYE/NAY	Jo List, Councilmember	AYE/NAY
Joe Kosinski Councilmember	AYE/NAY		

DULY PASSED AND ADOPTED THIS _____ day of MAY, 2012.

Town Council of the Town of Fort Myers Beach

By: _____
Larry Kiker, Mayor

Approved as to legal sufficiency:

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

ATTEST:

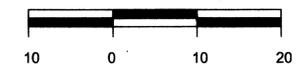
By: _____
Michelle Mayher
Town Clerk

PARKING SCHEDULE FOR SITE

AREA DESCRIPTION	SQ FT	PERCENTAGE
TOTAL SITE AREA	28,212 SQ FT	100%
BUILDING AREA	4,000 SQ FT	14%
OPEN SPACE	24,212 SQ FT	86%

USE	AREA	PARKING RATIO	SPACES REQ'D
RESTAURANT	4000 S.F.	8 SPACES : 1000 S.F.	32
OUTDOOR SEATING	1000 S.F.	8 SPACES : 1000 S.F.	8
TOTAL			40

REGULAR PARKING SPACES PROVIDED	VALUES
TOTAL H. C. PARKING SPACES PROVIDED (LDC-34-2020)	32
TOTAL PARKING SPACES PROVIDED (INCLUDING H.C.)	34



SITE DEVELOPMENT NOTES

- 1-Site area: 28,212 sq. ft. / 0.65 acres
- 2-Future land use-boulevard and mixed residential
- 3-Current zoning, cpd, cb, rm.
- 4-Proposed zoning cpd
- 5-Maximum proposed intensity is 4,000 sq. ft. of restaurant uses and 1,859 sq. ft. of outdoor seating/
- 6-Potable water to be provided by town of fort Myers beach.
- 7-Sanitary sewer to be provided by lee county utilities.
- 8-Solid waste pickup to be provided by town of fort Myers beach.
- 9-Buffer yards to be provided in accordance with LDC section 10-416, unless subject to deviation request as shown on MCP and landscape plan.
- 10-Site located in firm zone ae.
- 11-Base flood elevation +13.00' NAVD 88.

SITE DATA

SITE AREA: 28,212 sq. ft.
 BUILDING SQUARE FOOTAGE: 4,000 sq. ft.
 OUTDOOR SEATING SQUARE FOOTAGE: 1,859 sq. ft.
 MAXIMUM BUILDING HEIGHT: 16 ft. (F.F.9.53+/-)
 MINIMUM BUILDING SETBACKS:
 ESTERO BOULEVARD: 45 ft.
 FAIRWEATHER LANE: 2.39 ft.
 MANGO STREET: 110.5 ft.
 REAR: 2 ft.

SITE ADDRESS: 2301 ESTERO BOULEVARD
 FORT MYERS BEACH, FL.

△ SITE DEVIATION NOTES (B) (D)

- Exhibit D-1-F Schedule of Deviations & Justification
- 1-Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an (8) foot high solid stockade fence and 15-foot Type "C" buffers without a wall, as indicated on the MCP and landscape plan.
 - 2-Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15-foot Type "D" buffer between parking areas and rights-of-way, to allow for a 5-foot type "D" buffer between parking areas and rights-of-way.
 - 3-Deviation from the requirement of LDC Section 34-704(a) which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building.
 - 4-Deviation from the requirement of LDC Section 34-704(b)(1)a., which requires a minimum 10-foot street setback, to allow for a 2.39 street setback from Fairweather Lane to accommodate the existing building.
 - 5-Deviation from the requirement of LDC Section 34-704(b)(1)b., which requires a minimum 20-foot rear setback, to allow for a two-foot rear setback to accommodate the existing building.
 - 6-Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal facade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal facade to be 16 feet in length.
 - 7-Deviation from the requirement of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fair-weather Lane.
 - 8-Deviation from LDC Section 34-2020(d)(2)h., which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area, (for a total of 40 required spaces) to allow for a 15% reduction from the LDC requirement, (for a total of 34 provided spaces)
 - 9-Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.
 - 10-Deviation from LDC Section 10-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96+/- feet of connection separation along Mango Street.
 - 11-Deviation from LDC 10-289(d) which requires an 8 foot wide sidewalk along the Property's Estero Blvd. frontage to allow a 5'-0 sidewalk.

EXHIBIT A

Town of Fort Myers Beach
 APR 25 2012
 Received Community Devel.

ORIGINAL

REV #	DATE	BY	DESCRIPTION
①	4/11/12	DK	REVISED PER LPA APPROVALS
②	3/13/12	DK	REVISED MONUMENT SIGN LOCATION
③	3/13/12	DK	REVISED PER ZONE SUBMITTAL COMMENTS
④	3/8/12	DK	REMOVE S. STAIRWAY & E. SWAL

EAGLE EQUITY CAPITAL LLC
 MASTER CONCEPT PLAN
 FORT MYERS BEACH, FLORIDA

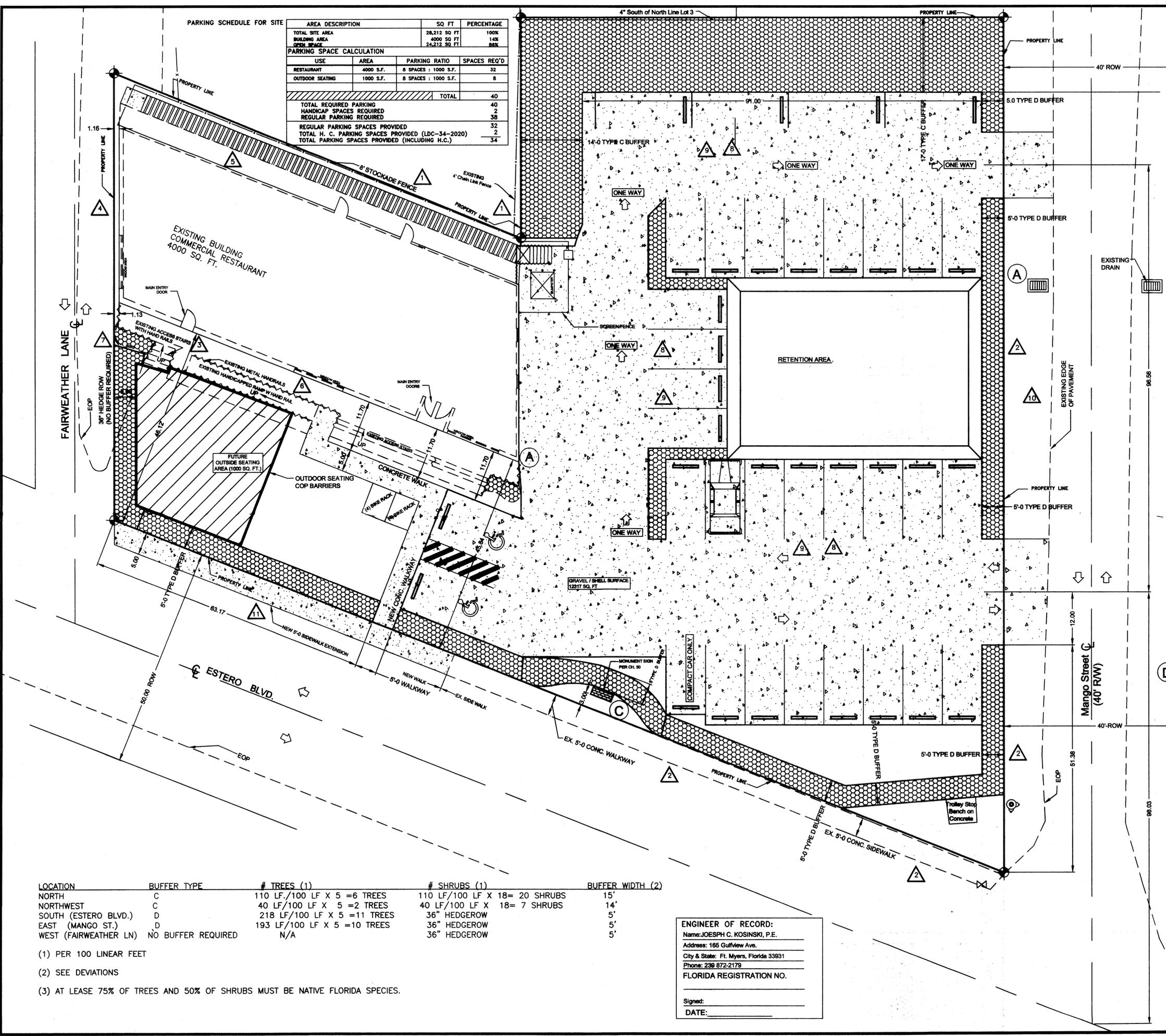
REV #	DATE	BY	DESCRIPTION
AS SHOWN	D.K.	2/20/12	BH

DATE	APPROVED	DRAWING No.	REV #
2/20/12	BH	11-301-03	D

LOCATION	BUFFER TYPE	# TREES (1)	# SHRUBS (1)	BUFFER WIDTH (2)
NORTH	C	110 LF./100 LF X 5 = 6 TREES	110 LF./100 LF X 18 = 20 SHRUBS	15'
NORTHWEST	C	40 LF./100 LF X 5 = 2 TREES	40 LF./100 LF X 18 = 7 SHRUBS	14'
SOUTH (ESTERO BLVD.)	D	218 LF./100 LF X 5 = 11 TREES	36" HEDGEROW	5'
EAST (MANGO ST.)	D	193 LF./100 LF X 5 = 10 TREES	36" HEDGEROW	5'
WEST (FAIRWEATHER LN)	NO BUFFER REQUIRED	N/A	36" HEDGEROW	5'

- (1) PER 100 LINEAR FEET
- (2) SEE DEVIATIONS
- (3) AT LEAST 75% OF TREES AND 50% OF SHRUBS MUST BE NATIVE FLORIDA SPECIES.

ENGINEER OF RECORD:
 Name: JOSEPH C. KOSINSKI, P.E.
 Address: 165 Gulfview Ave.
 City & State: Ft. Myers, Florida 33931
 Phone: 239 872-2179
 FLORIDA REGISTRATION NO.
 Signed: _____
 DATE: _____



Eagle Equity Capital CPD Amendment

ORIGINAL

Exhibit D-1-F Schedule of Deviations & Justifications

REVISED 04/23/2012

1. **Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14 to 15-foot Type "C" buffers without a wall, as indicated on the MCP and landscape plan.**

Justification: The deviation to provide an eight (8)-foot tall stockade fence along the rear of the existing building was previously approved per Resolution No. 06-30, and is required to screen for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. As of the date of this submittal, the fence has been constructed and effectively screens the adjacent single family use from the existing building as intended by the LDC. Therefore, the Applicant respectfully requests continuation of this deviation approval.

The 14- to 15-foot Type "C" buffer proposed where the parking area abut single family residential uses will also provide appropriate screening where no buffer currently exists. The proposed buffer yards will result in an enhancement to surrounding residential properties and will visually screen the proposed restaurant and parking uses as prescribed on the proposed MCP. Also, as discussed with Staff, provision of a wall along the property line may result in maintenance issues that can be avoided through the appropriate provision of vegetative screening, as proposed.

2. **Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15-foot Type "D" buffer between parking areas and rights-of-way, to allow for a 5-foot Type "D" buffer between parking areas and rights-of-way.**

Justification: Due to the compact, infill nature of the site, the Applicant respectfully requests reduced buffer widths along Mango Street and Estero Boulevard to screen the proposed parking area. In order to accommodate the requisite parking, stormwater management, and other upgraded site features, there is insufficient space to provide a 15-foot wide buffer where the parking area abuts public rights-of-way. The proposed 5-foot buffer will contain the requisite Type "D" plantings and will therefore meet the intent of the LDC for screening parking areas, while recognizing the regulatory relief needed to allow for compact, infill redevelopment.

3. **Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land

Development Code. This deviation from the LDC has been in effect for several decades and has not resulted in any negative impact to health, safety or welfare. Therefore, the Applicant respectfully requests continuation of this deviation approval.

4. **Deviation from the requirement of LDC Section 34-704(b)(1)a., which requires a minimum 10-foot street setback, to allow for a 2.39 street setback from Fairweather Lane to accommodate the existing building.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. This deviation from the LDC has been in effect for several decades and has not resulted in any negative impact to health, safety or welfare. Therefore, the Applicant respectfully requests continuation of this deviation approval.

5. **Deviation from the requirement of LDC Section 34-704(b)(1)b., which requires a minimum 20-foot rear setback, to allow for a two-foot a rear setback to accommodate the existing building.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. This deviation from the LDC has been in effect for several decades and has not resulted in any negative impact to health, safety or welfare. Therefore, the Applicant respectfully requests continuation of this deviation approval.

6. **Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal façade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal façade to be 16 feet in length.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. The building has undergone a substantial renovation that dramatically improved the appearance of the building, which meets the overall intent of the LDC's commercial design standards.

7. **Deviation from the requirement of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. This deviation from the LDC has been in effect for several decades and has not resulted in any negative impact to health, safety or welfare. Therefore, the Applicant respectfully requests continuation of this deviation approval.

8. **Deviation from LDC Section 34-2020(d)(2)h., which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 40 required spaces) to allow for a 15% reduction from the LDC requirement (for a total of 34 provided spaces).**

Justification: Due to the infill nature of the site, the Applicant is requesting a reduction to the number of parking spaces required to support the outdoor seating area. The required parking for indoor restaurant uses is provided in accordance with the Section 34-2020 of the LDC.

The subject property consists of a pedestrian-oriented restaurant use within walking distance of numerous hotels within the central business district of Fort Myers Beach. Additionally, the property is owned by the owner of the Neptune Inn and intended as an ancillary restaurant to service hotel guests. Therefore, a significant number of patrons are expected to walk or bicycle to the property.

Moreover, the proposed CPD exponentially increases the parking and loading areas from one (1) handicap and one (1) standard parking space shown on the approved MCP, to thirty-two (32) standard parking spaces and two (2) handicap parking spaces, as shown on the proposed MCP. Upon approval of this petition the parking spaces will no longer back out onto public rights-of-way, thereby mitigating potential hazard to pedestrians and vehicles.

For these reasons, the Applicant respectfully submits that approval of this request will recognize the pedestrian nature of the project, and that the deviation will not negatively impact public, health, safety or welfare.

9. **Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.**

Justification: The proposed crushed shell or limerock surface will complement the overall character of the Town of Fort Myers Beach, while ensuring public health, safety and welfare. The proposed impervious surface will also result in environmental benefits, including reduction of heat island effect due to higher reflectivity when compared to asphalt, and will help to filter and reduce runoff from the site. Moreover, the engineered MCP is designed to prevent the flow of sediment-laden runoff from the parking area via strategically located stormwater management features. Lastly, the handicap parking spaces will be paved to further ensure the safety of restaurant patrons.

10. **Deviation from LDC Section 10-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96+/- feet of connection separation along Mango Street.**

Justification: The reduced connection separation along Mango Street is required to accommodate the parking area shown on the MCP. The two (2) points of connection to Mango Street will significantly enhance public safety for vehicles entering and exiting the site, as well as for pedestrians and bicyclists travelling along the Estero Boulevard frontage. Moreover, the reduced connection separation is minor in nature and represents only a 25% reduction from the required separation distance. Due to low traffic speeds along Mango Street, the minor nature of the request, and the enhanced safety provided via the proposed layout, the Applicant respectfully requests approval of this deviation.

11. Deviation from LDC Section 10-289(d) which requires an 8-foot wide sidewalk along the Property's Estero Boulevard frontage, to allow for a 5-foot wide sidewalk.

Justification: The Applicant is proposing to significantly improve the pedestrian environment within the property and along Estero Blvd., which adequately justifies the proposed deviation for a slightly reduced sidewalk width.

A 5-foot sidewalk is proposed along the Estero Blvd. frontage, where no sidewalk exists today. Additionally, the existing parking lot, which requires vehicles to back out directly onto Estero Blvd., will be relocated to the side of the building to restrict vehicular ingress/ingress to Mango Street. This will significantly improve bicycle and pedestrian safety along the roadway. Also, there is proposed sidewalk connection between the restaurant uses and the Estero Blvd. sidewalk, which will provide a safe pedestrian connection to the building, and mitigate the need to traverse the parking lot.

When these various design components are combined, the proposed CPD will have a dramatic positive impact upon the Estero Blvd. pedestrian environment, and will meet the intent of the LDC for the provision of pedestrian and bicycle facilities; thereby protecting public health, safety and welfare.



Town of Fort Myers Beach

DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT

TYPE OF CASE: Commercial Planned Development (CPD)
CASE NUMBER: FMBDCI2012-0001
LPA HEARING DATE: April 10, 2012
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Waldrop Engineering for Eagle Equity Capital

Request: Commercial Planned Development (CPD) Amendment to expand the existing CPD, formerly known as Big John's Board Walk Eatery, which was approved per Resolution No. 06-30, to allow for required parking on-site for the existing restaurant uses, in addition to stormwater management, and landscape buffers.

Subject property: BEACH ESTATES
Block D Plat Book 6 Page 68
Lots 1 & 2

SEAGRAPE SUBDIVISION
Block E Plat Book 4 Page17
LOT 1, 2 & 3

Physical Address: 2301 Estero Boulevard
2311 Estero Boulevard
111 Mango Street
121 Mango Street

STRAP #: 19-46-24-W3-0110D.0010
19-46-24-W3-0120E.0010
19-46-24-W3-0120E.0020
19-46-24-W3-0120E.0030

Parcel Size: .66 AC (combined)

FLU: Boulevard

Mixed Residential

Zoning: COMMERCIAL PLANNED DEVELOPMENT (CPD)
COMMERCIAL BOULEVARD (CB)
RESIDENTIAL MULTI-FAMILY (RM)

Current use(s): Restaurant, Vacant

Adjacent zoning and land uses:

North: Single Family Residential
RESIDENTIAL MULTI-FAMILY (RM)
Mixed Residential

South: Neptune Inn (Hotel)
COMMERCIAL RESORT (CR)
Boulevard

Island Treasures and Rickshaw Service (Mixed Use)
COMMERCIAL BOULEVARD (CB)
Boulevard

Multi-family residential
COMMERCIAL BOULEVARD (CB)
Boulevard

East: Mango Street (2 lane ROW)

Sea N' Sand (Retail)
COMMERCIAL BOULEVARD (CB)
Boulevard

Heavenly Biscuit (Restaurant)
RESIDENTIAL MULTI-FAMILY (RM)
Mixed Residential

Single Family Residential
RESIDENTIAL MULTI-FAMILY (RM)
Mixed Residential

Mango Street Inn (Hotel)
RESIDENTIAL MULTI-FAMILY (RM)
Mixed Residential
West: Fairweather Lane (2 lane ROW)

Naples Grocery (Retail)
COMMERCIAL BOULEVARD (CB)
Boulevard

II. BACKGROUND AND ANALYSIS

Background:

In 2006 the previous owners of the property located at 2301 Estero Boulevard applied for a rezoning from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow for the conversion of an existing 4,000 square foot building from office uses to restaurant uses. The application was denied by Town Council after public hearing in May of 2006. The applicant and the Town went through the FLUEDRA (Future Land Use and Environmental Dispute Resolution Act) process and reached a compromise that included a revised Master Concept Plan (MCP) showing an additional outdoor dining area of 1,000 ± square feet. Town Council adopted Resolution 06-30 in December of 2006, memorializing this compromise. (Resolution 06-30 is attached to the application.) One of the main issues with the 2301 Estero parcel was the required parking for the restaurant uses. The agreement reached in 06-30 allowed for required parking to be provided off-site through a joint use parking agreement.

A limited review development order was applied for in 2007, but the permit expired with none of the approved changes from Resolution 06-30 completed.

Ownership of the subject property changed in 2011 and the current property owner also acquired adjacent property located at 2311 Estero Boulevard, 111 Mango Street and 121 Mango Street. (See Applicant Exhibit 5-3)

Analysis:

This application seeks to amend and expand the existing CPD, by including the land areas of 2311 Estero Boulevard, 111 Mango Street and 121 Mango Street, to on-site parking for the existing building and restaurant uses, in addition to providing stormwater management and landscape buffers.

Prospective tenants have been inquiring about leasing the restaurant spaces in the existing building, but, with no suitable off-site parking lots available for joint use arrangements the property owner decided to meet with Staff to determine their options. The result of that initial discussion and many others subsequent to it resulted in this request to amend the CPD.

The subject property is in an area of the Town of Fort Myers Beach that is just outside the DOWNTOWN zoning district, where land uses are more intense than on other parts of the island. Commercial uses continue along Estero Boulevard but along side streets in this area, residential uses become dominant. Immediately surrounding the subject property are two hotels, the Neptune Inn and the Mango Street Inn, as well as three retail/commercial establishments and one restaurant. The uses proposed by the applicant on the Schedule of Uses (see applicant Exhibit D-2-3) are compatible within this existing development framework.

As outlined in the background section of this report, the 2301 Estero Boulevard parcel went through the planned development process in 2006 eventually resulting in an approval granted by Resolution 06-30. That process was very focused on the pedestrian nature of the subject property and the proposed restaurant uses. Town Council agreed with that approach by approving an MCP that provided for most of the open space on the 2301 parcel

to be developed as either outdoor seating area, landscape area or stormwater mitigation area. Required parking was to be provided off-site through a joint use parking agreement. The FLUEDRA case stated: *“In the instant case, the property owner seeks to provide service to nearby residents and tourists, and is therefore prepared to develop the property in a manner which will enhance the “pedestrian friendly” nature of both their and surrounding properties, discourage consideration of their property as a vehicular destination unless and until appropriate offsite parking can be arranged, and make improvements which will enhance surface water management. It is believed that this can be accomplished by virtually eliminating on-site parking (making this clearly a pedestrian destination rather than a vehicular one) which will have the additional advantage of freeing property which would otherwise be utilized for parking for use of improvements in conformity with Objective 1-A of the Plan and stormwater mitigation.”*

Development of the 2301 Estero Boulevard property as a pedestrian friendly enterprise that would service overnight guests and residents rather than day trip visitors is contemplated by the foregoing language and in the approval of Resolution 06-30, but no redevelopment of the 2301 parcel was ever accomplished.

In addition to providing the required parking on-site for the indoor restaurant uses, the applicant proposes an on-site stormwater management system, landscape buffers to protect the adjacent residential properties, and most importantly, elimination of the back out parking spaces long Estero Boulevard. The proposed site plan is included in the Master Concept Plan (MCP) attached hereto as Exhibit A.

The applicant maintains that the subject property, as established by Resolution 06-30, remains a pedestrian friendly development that will serve overnight guests and visitors alike.

Staff also reviewed the request for consistency with the Comprehensive Plan and identified the following goals, objectives and policies that apply to the requested zoning action.

Policy 4-A-3: The town shall protect residential neighborhoods from intrusive commercial activities.

Generally, a proposal to amend a CPD to include two residentially zoned lots (111 and 121 Mango Street) in an existing residential neighborhood could be considered commercial intrusion. However, upon closer review of this particular amendment request and related justifications provided by the applicant, Staff has determined that the applicant has demonstrated consistency with Policy 4-A-3 by limiting the schedule of uses, proposing a Type C landscape buffer along the north and west property lines of the 121 Mango Street parcel, and by proposing to keep the existing 8 foot stockade fence along the north property line of the 2301 Estero Boulevard parcel.

It is also important to note that the proposed schedule of uses (see applicant Exhibit D-2-3) for the subject property is very limited and does not include any new commercial buildings. There is, however, a proposed increase in intensity consisting of an outdoor seating area located on the 2301 parcel between the existing building and Estero Boulevard. The site design of the subject property provides adequate buffering to the north where Mango Street transitions into a more traditional residential neighborhood while moving the parking more toward Estero Boulevard.

The applicant is proposing a 14-17' (width varies) Type C landscape buffer long the north and west property lines of the 121 Mango Street parcel. This buffer is proposed to provide the code required

plant materials. This proposed buffer represents an increase in screening from the existing conditions on-site. Furthermore, the existing eight foot stockade fence along the north property line of the 2301 parcel, as well as the existing building, protects the adjacent residential property from the increased commercial uses to the south.

Policy 4-C-2: Commercial Intensity: *The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5.*

As demonstrated on the MCP and application, the requested CPD amendment does not increase the allowable square footage for the existing commercial building over the previously approved 4,000 square feet. However, including the 2311 Estero and 111 and 121 Mango Street lots does add acreage to the overall subject property size. The Floor Area Ratio (FAR) is, therefore, calculated at 0.2, a figure below the allowable 1.5 in both the Boulevard and Mixed Residential Future Land Use (FLU) categories.

Policy 4-C-3: Commercial Locations: *When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:*

- i. No rezonings for commercial uses shall be allowed in the “Low Density” category.*
- ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.*
- iii. In the “Mixed Residential” category, commercial uses are limited to lower-impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process.*
- iv. In the “Boulevard” category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.*
- v. The following principles shall be considered by the town when evaluating requests for new commercial uses:*
 - a. Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion.*
 - b. Shopping and services that contribute to the pedestrian character of the town are strongly preferred over buildings designed primarily for vehicular access.*
- vi. The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by:*

- a. *the type of commercial activities (such as traffic to be generated, hours of operation, and noise);*
- b. *its physical scale (such as the height, and bulk of proposed buildings); and*
- c. *the orientation of buildings and parking.*

Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.

Staff recommends that the application be found consistent with Policy 4-C-3 ii through vi, because the subject property is not within the Low Density FLU and therefore subsection i does not apply.

The site design, as proposed on the MCP, utilizes the existing commercial building and does not propose any new structures or additional uses. This, along with the proposed perimeter buffers and stockade fence, demonstrate sensitivity and awareness of surrounding residential uses, by limiting commercial activities and locating those permitted activities closer to Estero Boulevard and away from residential neighborhoods. The schedule of uses proposed by the applicant is essentially limited to restaurant uses and outdoor seating. These uses are compatible and complement the surrounding commercial uses (hotels and retail establishments) while also providing for resident and overnight guests rather than day trip visitors as specifically stated in Policy 4-C-3v. Moreover, the site design proposes a fundamental change to the subject property's circulation, eliminating back out parking along Estero Boulevard and providing a paved sidewalk the length of the subject property's Estero frontage. Landscape buffers will provide visual appeal and screening of the parking, furthering the public realm and enhancing and improving the safety of the pedestrian experience.

Policy 4-B-4: "Mixed Residential": *designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile homes and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. 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 legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

Policy 4-B-4 stresses that any commercial uses permitted within the Mixed Residential FLU must be sensitive to adjacent residential properties and is limited to lower intensity uses. Commercial uses are well established at the southern end of Mango Street with the Mango Street Inn and Heavenly Biscuit restaurant. However, by providing ample buffering along the north and west property lines and by pushing the majority of the parking area to the southern portion of the subject property, the applicant has demonstrated consistency with this policy.

Amending the CPD to include the 111 and 121 Mango Street parcels will convert residential land uses to commercial land use. This rezoning, along with other converted land uses since November 1999, results in approximately 8.1% of non-residential land uses in the Mixed Residential category, which leaves approximately 23 acres remaining available for non-residential land uses in that category before the 12% cap is reached.

Policy 4-B-5: "Boulevard": *a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential 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 legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.*

Similar to the policy direction in 4-B-4 for the Mixed Residential FLU, Policy 4-B-5 pertaining to the Boulevard FLU stresses sensitivity and compatibility. As previously discussed, the landscape buffers, limited schedule of uses, elimination of back out parking onto Estero and the proposed sidewalk extension along the subject property's Estero Boulevard frontage are all elements proposed by the applicant that demonstrate consistency with this policy.

The 2301 and 2311 Estero Boulevard parcels are located within the Boulevard FLU and are currently commercially-zoned. Therefore an analysis of proposed increase of non-residential uses in the FLU category is not applicable.

Goal 7: *To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.*

Policy 7-A-2 Parking: *Even though existing parking lots are not used to capacity, parking is not abundant at Fort Myers Beach. The welcome rebirth of commercial activity near Times Square will increase the demand for parking. The Town of Fort Myers Beach will address parking shortages through the methods outlined in this plan.*

The proposed amendment to the CPD is focused on providing additional on-site parking for the tenants and customers of the existing commercial building. By providing landscape buffers, bike racks, extending the sidewalk along Estero Boulevard and by eliminating the back out parking in front of the existing building, the applicant has proposed dramatic improvements to this portion of Estero Boulevard. Parking and delivery ingress/egress is via Mango Street.

Policy 7-D-2 Improve Trolley Service: *Trolley ridership increases when service is more frequent and when fares are low or free, yet no long-term funding or operational plan has been developed for providing higher service levels. Practical measures to improve trolley usage include:*

- i. Recurring subsidies from tourism resources so that service can be enhanced and congestion minimized during heavy seasonal traffic;*

- ii. *Pull-offs at important stops along Estero Boulevard so that passengers can safely board and traffic is not blocked excessively; these pull-offs could be built during other improvements to Estero Boulevard or required by the Land Development Code during the redevelopment process.*
- iii. *Clear signs at every stop with full route and fare information;*
- iv. *Bus shelters at key locations, with roofs, benches, and transparent sides;*
- v. *Replacement of the existing trolley buses with clean-fuel vehicles so that businesses won't object to having trolleys stop at their front doors; and*
- vi. *Accommodation of the special needs of the transportation disadvantaged.*

Staff worked extensively with the applicant and his consultants to try to reach an agreement whereby the applicant would provide a trolley pull off easement and integrate it into the MCP. However, at the time of sufficiency the applicant opted to forgo providing a trolley easement and instead chose to move forward with the MCP attached to this application. At the time of public hearing Town Council has the option to make approval of this CPD amendment conditioned upon the studying the feasibility of a trolley pull off easement.

Policy 7-H-10 Connections to Estero Boulevard: *An excessive number of streets and driveways have direct access to Estero Boulevard, reducing its ability to handle peak-season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points onto Estero Boulevard.*

As shown on the MCP (Exhibit A), the subject property has been redesigned, eliminating 10 existing back-out parking spaces that caused traffic and pedestrian conflicts along Estero Boulevard. The proposed parking lot has been moved to the east side of the existing building providing 34 spaces, including two ADA accessible spaces as well as a bike rack accommodating up to four bicycles. Ingress and egress is along Mango Street. This redesign should reduce vehicular and pedestrian conflicts along Estero Boulevard as well as interruptions to traffic flow, especially during peak season.

Policy 7-J-2: Traffic Impact Analyses: *A thorough traffic impact analysis is currently required only for major rezonings and very large development orders. The town shall amend its Land Development Code during 2010 to:*

- i. *Decrease the thresholds for requiring traffic impact analyses;*
- ii. *Require them to study the cumulative impact of potential development; and*
- iii. *Use the results in assessing whether impacts are acceptable, and whether an improved design could offset some of the impacts.*

Resolution 06-30 approved 4,000 square feet of indoor restaurant use and 1,000 square feet of outdoor seating, required a local development order *"prior to any use of the subject property in accordance with this planned development. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order."*

The proposed request for 5,859± square feet of restaurant use is a net increase of 859± square feet over the prior approval. This increase comes from a request for additional outdoor seating area.

LDC Section 2-46(a)(2) provides a concurrency exemption for *"Commercial building permits for interior remodeling improvements that are not for the purpose of changing the use of the building and do not increase its floor area."* Further, subsection (b) provides that *"...the Town Council may*

evaluate the probable concurrency impacts of such proposed development activities at the earlier stages as one factor in their determination whether or not to approve such activities.”

Since the building in question was previously occupied by medical offices, it is possible that the subject property could be vested for an amount of trips associated with that occupancy. Accordingly, ITE Code 720 specifies a trip generation rate of 3.46 trips per 1,000 square feet for medical/dental offices. ITE Code 931 specifies a trip generation rate of 7.49 trips per 1,000 square feet for quality restaurants. Therefore the vested trips based upon the prior occupancy of 4,000 square feet of medical/dental office equals 13.84 PM peak hour trips. The vested trips based on the prior approval (Resolution 06-30) which included 5,000 square feet of quality restaurant equals 37.45 PM peak hour trips. The projected trips based upon the proposed use which includes 5,859 square feet of quality restaurant equals 43.88 PM peak hour trips.

The projected increase in trips from the proposed request of 5,859 square feet of restaurant uses versus medical/dental office is 30.04 PM peak hour trips. The project increase of trips from the proposed request and the prior approval (Resolution 06-30) is 6.43 PM peak hour trips.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of a planned development rezoning found in Section 34-85 and 34-216 of the LDC, Staff makes the following findings and conclusions:

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

Resolution 06-30 did not specifically address parking for the restaurant uses as an on-site condition. This ambiguity in on-site parking requirements is being addressed and corrected with the proposed amendment to the CPD.

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

A single property owner has acquired all four parcels, 2301 and 2311 Estero Boulevard and 111 and 121 Mango Street, which comprise the subject property. This change in ownership allows for the required parking on the 2301 parcel to effectively be accommodated on-site. However, in order to permit an increase of commercial uses on parcels within the Boulevard and Mixed Residential FLU categories, a commercial planned development rezoning or amendment is required.

3. *The impact of a proposed change on the intent of this chapter.*

The proposed amendment to the CPD will implement the provisions found in Section 34-702, the Commercial Boulevard zoning district, which requires rezoning to Planned Developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code.

4. *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 requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Boulevard and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process.

It is important to note, however, that this CPD amendment request provides the Town with an opportunity to add a trolley pull-out at this location. Policy 7-D-2(ii) suggests that these trolley pull-offs can be installed when improvements to Estero Boulevard are constructed, but that policy also states that trolley pull-offs can be “required by the Land Development Code during the redevelopment process.” Staff is of the opinion that requiring a trolley pull-off as part of the proposed CPD amendment is a policy decision that is for Town Council to determine.

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

The request to amend the CPD for 2301 Estero to include land at 2311 Estero, 111 Mango and 121 Mango meets and exceeds all performance and locational standards for the proposed uses. No new structures or substantial improvements are proposed, therefore the Commercial Design Standards that are found in Section 34-991 and subsequent sections of the LDC do not apply. Furthermore, the proposed amendment is consistent with Policy 4-C-2 which requires that commercial uses in the Boulevard and Mixed Residential FLU be designed to contribute to the pedestrian experience and to provide services for overnight guests and residents.

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

The applicant has provided Letters of Availability from Beach Water and Lee County Utilities, demonstrating water and sewer service capacity and availability.

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

As existing commercially developed and vacant lots located on interior parcels of land away from both the Matanzas Pass waterfront and the Gulf of Mexico and beach, the subject property does not include any sensitive and/or environmentally critical lands. However, any lighting visible from the beach and/or included on development order plans will be required to meet all applicable environmental codes including, but not limited to, Sea Turtle lighting requirement as found in LDC Section 14-79.

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

The property owner has recently made façade improvements and repairs to the existing building on the subject property. The CPD amendment proposes additional improvements and installations that will have a significant positive impact on the

pedestrian experience, resident and visitor alike, and the overall aesthetic appeal of the subject property. Elimination of back out parking, installation of landscape buffers, and opportunity for new business ventures will serve to enhance the immediately surrounding area. The redevelopment of the subject property will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.

9. *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 previously discussed in the analysis section above, the increase of trips from the prior approval of Resolution 06-30 is 6.43 peak hour trips. Staff has determined that this may create undue burden. However, the site design improvements that accompany the requested CPD amendment demonstrate a significant improvement to bicycle and pedestrian safety and contribute to the overall positive visual appearance along the subject property's Estero Boulevard frontage. That being said, this request does present an opportunity to provide for a trolley pull off easement that would dramatically improve the public transportation system in the Town while possibly offsetting the additional vehicular trips generated by this request.

Requested Deviations:

Based on an analysis of the procedure for reviewing deviation requests as found in Section 34-216 which requires that each deviation be found to

- a. *Enhance the achievement of objectives of the planned development;*
- b. *Preserve and promote the general intent of the LDC to protect the public health, safety and welfare; and*
- c. *Operate to the benefit, or at least not to the detriment, of the public interest; and*
- d. *Is consistent with the Fort Myers Beach Comprehensive Plan.*

Staff makes the following recommendations regarding the requested deviations:

Deviation #1

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14-15 foot Type C buffers without a wall, as indicated on the MCP and landscape plan.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of the requested deviation. The 8 foot tall stockade fence was a condition of approval in Resolution 06-30 in order to provide screening between the existing building and the adjacent residential property to the north. The 2 foot rear yard of the 2301 Estero parcel limits the amount of buffering that can be provided, thus only the fence is feasible. The proposed Type C buffer along the western and northern property lines of the 121 Mango Street parcel will provide a visual screen between the residential uses to the north and the commercial uses on the subject property where currently there is no buffer. Staff is feels that the

buffer plant material will be better maintained and have a higher rate of survival is the wall requirement is waived.

Deviation #2

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15 foot Type D buffer between parking areas and right-of-way, to allow for a 5 foot Type D buffer between parking areas and right-of-way.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of Deviation #2, because the request has no detrimental impact on the public interest and enhances the objective of the proposed planned development. Approving a reduction in required buffer widths is a mutually beneficial compromise as it allows for the most efficient use of the subject property and requires an aesthetic improvement to the Estero Boulevard and Mango Street road frontages. It should be noted that approval of this deviation does not include a reduction in required plant material; 5 trees per 100 linear feet and a double row hedge maintained at 36" will still be required along the Estero Boulevard and Mango Street frontages. Please see Exhibit B, for an illustrative landscape plan.

Deviation #3

Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of Deviation #3, as the request is intended to validate existing conditions on the subject property and has no detrimental impact to the public interest.

Deviation #4

Deviation from the requirements of LDC Section 34-707(b)(1)a, which requires a minimum 10 foot street setback to allow for a 2.39 foot street setback from Fairweather Lane to accommodate the existing building.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of Deviation #4, as the request is intended to validate existing conditions on the subject property and has no detrimental impact to the public interest.

Deviation #5

Deviation from the requirement of LDC Section 34-704(b)(1)b, which requires a minimum 20 foot rear setback, to allow for a two-foot rear setback to accommodate the existing building.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of Deviation #5, as the request is intended to validate existing conditions on the subject property and has no detrimental impact to the public interest.

Deviation #6

Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal façade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal façade to be 16 feet in length.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of Deviation #6, as the request is intended to validate existing conditions on the subject property and has no detrimental impact to the public interest. The applicant has indicated no plans for substantial improvements to the existing building and therefore is not required to meet the Commercial Design Standards.

Deviation #7

Deviation from the requirements of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of Deviation #7, as the request is intended to validate existing conditions on the subject property and has no detrimental impact to the public interest.

Deviation #8

Deviation from LDC Section 34-2020(d)(2)(h), which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 47 required parking spaces) to allow for a 30% reduction from the LDC requirement for a total of 34 provided spaces.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of the requested deviation. Section 34-2020(d)(2)(h) requires that restaurants provide 8 spaces per 1000 square feet of floor area plus any outdoor seating area. The subject property includes 4000 square feet of existing indoor restaurant floor area, which results in 32 required spaces. The proposed outdoor seating area of 1859± square feet adds an additional 15 required spaces for a grand total of 47 required spaces. The applicant is providing 34 total spaces,

including two ADA accessible spaces, a reduction of approximately 30%. Staff supports the request for a reduction in spaces because the inclusion of outdoor seating space will not generate additional need for parking and will provide an enjoyable alternative for patrons of the restaurants while contributing to the pedestrian experience along this portion of Estero Boulevard.

However, it should be noted that a trolley pull off would have enhanced the rationale for this deviation and may have reduced the parking requirement, further reducing the impacts on the neighborhood.

Deviation #9

Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of the requested deviation. The area around the subject property, as well as many parts of Estero Island, has a tendency to flood in large storm events. The applicant's request to use a more porous material in the parking lot will reduce the subject property's impact on the current stormwater system. Additionally, the applicant has provided a large on-site retention area as an extra method for stormwater management. Furthermore the applicant has indicated that all disabled parking spaces will comply with state law and the requirements of the Florida Building Code.

Deviation #10

Deviation from LDC Section 34-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96± feet of connection separation along Mango Street.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of the requested deviation. The site design of the subject property eliminates the back out parking along Estero Boulevard, but results in a connection separation that is under the 125' requirement. The actual separation between points is minor and is only 25% less than the distance required.

Deviation #11

Deviation from LDC Section 10-289(d) which requires an 8 foot wide sidewalk along the property's Estero Boulevard frontage, to allow for a 5 foot wide sidewalk.

For the applicant's Schedule of Deviations and Justifications please see applicant Exhibit D-1-F. Revised 3/28/12

Staff recommends APPROVAL of the requested deviation. Sidewalks along Estero Boulevard in this part of the Town are inconsistent. If there was a network of 8' sidewalks on the adjacent properties, Staff would be unable to support this deviation. Currently, however, no sidewalks exist on the subject property nor do

they exist on neighboring properties across Mango Street and Fairweather Lane. By eliminating the back out parking along Estero Boulevard and providing a buffer between the subject property and Estero Boulevard the applicant has demonstrated a consistent effort to improve bicycle and pedestrian safety that justifies the requested reduction in sidewalk width.

III. RECOMMENDATION

Taking into consideration the current and existing conditions of this site, Staff recommends **APPROVAL** of the requested rezoning from Commercial Boulevard (CB) and Residential Multi-family (RM) to Commercial Planned Development (CPD). Limitations and conditions are for Town Council to determine at the time of Public Hearing. Should Town Council choose to approve the requested rezoning, Staff recommends the approval be subject to the following conditions:

1. If the principal building on the subject property (2301 parcel) is removed or replaced for any reason, deviations 3, 4, 5, 6, and 7 will become null and void. Any new buildings replaced on the subject property must comply with required setbacks and any other regulations in effect at the time of permitting.
2. That the trolley stop concrete bench as shown on the southwest corner of the subject property, generally at the intersection of Fairweather Street and Estero Boulevard, be moved to the southeast corner of the subject property, generally near the intersection of Mango Street and Estero Boulevard.

NOTE: Applicant's revised MCP submitted after the LPA meeting on 4/25/12 has satisfied this condition.

3. Any changes or fracturing of ownership of the four parcels within the subject property will require, at a minimum, an administrative amendment to the Mast Concept Plan to reflect the change in ownership, which will include recorded unified control documentation.
4. The parking lot must be stabilized in accordance with the provisions in Section 34-2017(b)(1).
5. A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees.
6. Should Town Council determine that the Traffic Impact Statement Waiver is not warranted and the application may place an undue burden on road facilities, based upon Staff analysis, then Town Council should consider the following conditions to mitigate those impacts, including a Traffic Impact Statement:
 - a. Require the applicant to amend the Master Concept Plan to reduce the outdoor dining square footage to 1,000 square feet, consistent with the prior

- approval in Resolution 06-30 and maintain Condition 5, as worded above; and/or
- b. Require the applicant to provide a Traffic Impact Statement that demonstrates the proposed CPD amendment meets concurrency for review and approval by Town Council. In the event the Traffic Impact Statement demonstrates that the proposed CPD amendment does not meet concurrency standards, the applicant shall provide a Traffic Impact Mitigation Plan to assess mitigation strategies, including the feasibility of providing an easement on the subject property for a future trolley stop and shelter, as a mitigation strategy. The Traffic Impact Mitigation Plan and any requisite amendments to the Master Concept Plan would then require review by the Local Planning Agency and approval by Town Council to effectuate the rezoning; and/or
 - c. Require the applicant to provide an easement for a future trolley shelter for the triangular shaped area labeled on the Master Concept Plan as “Trolley Stop Bench on Concrete” as a means of mitigating the requested parking reduction deviation.

IV. LPA MEETING

The Local Planning agency held a public hearing on April 10, 2012 where this case was advertised and heard. The applicant’s agent presented their case, and then Staff presented theirs. There was a thorough question and answer session of both Staff applicant’s agent, and the Town Attorney. One member of the public spoke during public comment and the opinions expressed was generally in support of the requested amendment and improvements to the subject property.

The majority of the discussion among the LPA members was around the issues of Traffic, a potential trolley stop and the requirement of the Land Development Code (both at time of zoning application and at the time of development order submittal) for a Traffic Impact Statement.

Ultimately, the LPA voted 7-0 to approve the CPD amendment with the requested 11 deviations and 9 conditions, three additional beyond Staff’s recommendation. Furthermore, LPA decided that they did not agree with Staff’s condition #6 and voted in favor of recommending that Council waive the requirement for a TIS at both the time of zoning and at the time of development order submittal. Please see LPA resolution 2012-005 for exact language.

V. CONCLUSION

Rezoning the property from Commercial Boulevard and Residential Multifamily to Commercial Planned Development is consistent with the Boulevard and Mixed Residential future land use categories as contemplated in the Fort Myers Beach Comprehensive Plan. This request would not adversely affect the surrounding properties and would allow the applicant the fullest use of the subject property.

If Town Council finds that the requested use is contrary to the public interest or the health, safety, comfort, convenience, and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-85 regarding Rezoning, Town Council

should deny the request as provided in LDC Section 34-85(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience, or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested rezoning. Staff has recommended conditions for the Town Council's convenience and consideration.

Staff recommends **APPROVAL** of the requested rezoning, as conditioned.

Exhibits:

Exhibit A – Master Concept Plan

Exhibit B – Illustrative Landscape Plan

Exhibit C – Traffic Impact Statement Memo

LANDSCAPING NOTES

TREES AND PALMS:
 ALL CODE REQUIRED TREES AT THE TIME OF INSTALLATION MUST BE A MINIMUM OF 10 FEET IN HEIGHT, HAVE A 2-INCH CALIPER (AT 12 INCHES ABOVE THE FINISH GRADE) AND A FOUR - FOOT SPREAD. PALMS MUST HAVE A MINIMUM OF TEN FEET OF CLEAR TRUNK AT PLANTING. TREES ADJACENT TO WALKWAYS, BIKE PATHS AND RIGHT-OF-WAYS MUST BE MAINTAINED WITH EIGHT FEET OF CLEAR TRUNK. THE HEIGHT OF ALL TREES AND SHRUBS MUST BE MEASURED FROM THE FINAL GRADE OF THE PROJECT SITE.

SHRUBS AND HEDGES:
 SHRUBS MUST BE A MINIMUM OF 24 INCHES IN HEIGHT ABOVE THE ON-SITE ADJACENT PAVEMENT SURFACE TO BE BUFFERED AND/OR SCREENED, WHEN MEASURED AT THE TIME OF PLANTING. THEY MUST BE A MINIMUM THREE-GALLON CONTAINER SIZE AND BE SPACED 18 TO 36 INCHES ON CENTER. THEY MUST BE AT LEAST 36 INCHES IN HEIGHT WITHIN 12 MONTHS OF TIME OF PLANTING AND MAINTAINED IN PERPETUITY AT A HEIGHT OF NO LESS THAN 36 INCHES ABOVE THE ADJACENT PAVEMENT REQUIRED TO BE BUFFERED AND/OR SCREENED, EXCEPT FOR VISIBILITY AT INTERSECTIONS AND WHERE PEDESTRIAN ACCESS IS PROVIDED. REQUIRED HEDGES MUST BE PLANTED IN DOUBLE STAGGERED ROWS AND MAINTAINED SO AS TO FORM A CONTINUOUS, UNBROKEN, SOLID VISUAL SCREEN WITHIN A MINIMUM OF ONE YEAR AFTER TIME OF PLANTING.

PLANT MATERIAL STANDARDS:
 PLANT MATERIALS USED SHALL CONFORM TO THE STANDARDS FOR FLORIDA NO. 1 OR BETTER AS GIVEN IN 'GRADES AND STANDARDS FOR NURSERY PLANTS' PART I AND 'GRADES AND STANDARDS FOR NURSERY PLANTS' PART II, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TALLAHASSEE.

AT LEAST 75% OF TREES AND 50% OF SHRUBS MUST BE NATIVE FLORIDA SPECIES. 100% OF TREES & SHRUBS ARE NATIVE.

GENERAL LANDSCAPING REQUIREMENTS

REQUIRED NUMBER OF TREES, IN ADDITION TO LANDSCAPING FOR ALL BUFFERS AND PARKING AREAS - (1 TREE PER 3000 SQ. FT. OF DEVELOPMENT AREA) - 28,218 SQ. FT. / 3,000 SQ. FT. - 9.4 TREES
 9 TREES PROVIDED FOR GENERAL USE

PARKING TREE REQUIREMENTS

REQUIRED NUMBER OF TREES, IN ADDITION TO LANDSCAPING FOR ALL BUFFERS - (1 TREE PER 250 SQ. FT. OF INTERNAL PLANTING AREA) - 1256 SQ. FT. / 250 SQ. FT. - 5 TREES
 5 TREES PROVIDED FOR PARKING AREA

NORTH BUFFER (MODIFIED)*

*DEVIATION 4: EXHIBIT D-1-F REVISED 02/22/2012

5 TREES PER 100 L.F. REQUIRED (LENGTH- 35 L.F.) (35/100) x 5 - 2 TREES REQUIRED
 2 TREES PROVIDED
 HEDGE 50 SHRUBS PER 100 L.F. REQUIRED (LENGTH - 35 L.F.) (35/100) X 50 - 18 SHRUBS REQUIRED
 18 SHRUBS PROVIDED
 *DUE TO SPACE ONLY 35L.F. BUFFER PROVIDED

SOUTH BUFFER (MODIFIED)*

*DEVIATION 2: EXHIBIT D-1-F REVISED 02/22/2012

5 TREES PER 100 L.F. REQUIRED (LENGTH- 193 L.F.) (193/100) x 5 - 10 TREES REQUIRED
 10 TREES PROVIDED
 HEDGE 50 SHRUBS PER 100 L.F. REQUIRED (LENGTH - 193 L.F.) (193/100) X 50 - 97 SHRUBS REQUIRED
 97 SHRUBS PROVIDED
 *BUFFER TO BE 5' WIDE

EAST BUFFER (MODIFIED)*

*DEVIATION 4 & 5: EXHIBIT D-1-F REVISED 02/22/2012

5 TREES PER 100 L.F. REQUIRED (LENGTH- 110 L.F.) (110/100) x 5 - 6 TREES REQUIRED
 6 TREES PROVIDED
 HEDGE 50 SHRUBS PER 100 L.F. REQUIRED (LENGTH - 110 L.F.) (110/100) X 50 - 55 SHRUBS REQUIRED
 55 SHRUBS PROVIDED
 *DUE TO SPACE ONLY 110L.F. BUFFER PROVIDED

WEST BUFFER (MODIFIED)*

*DEVIATION 2: EXHIBIT D-1-F REVISED 02/22/2012

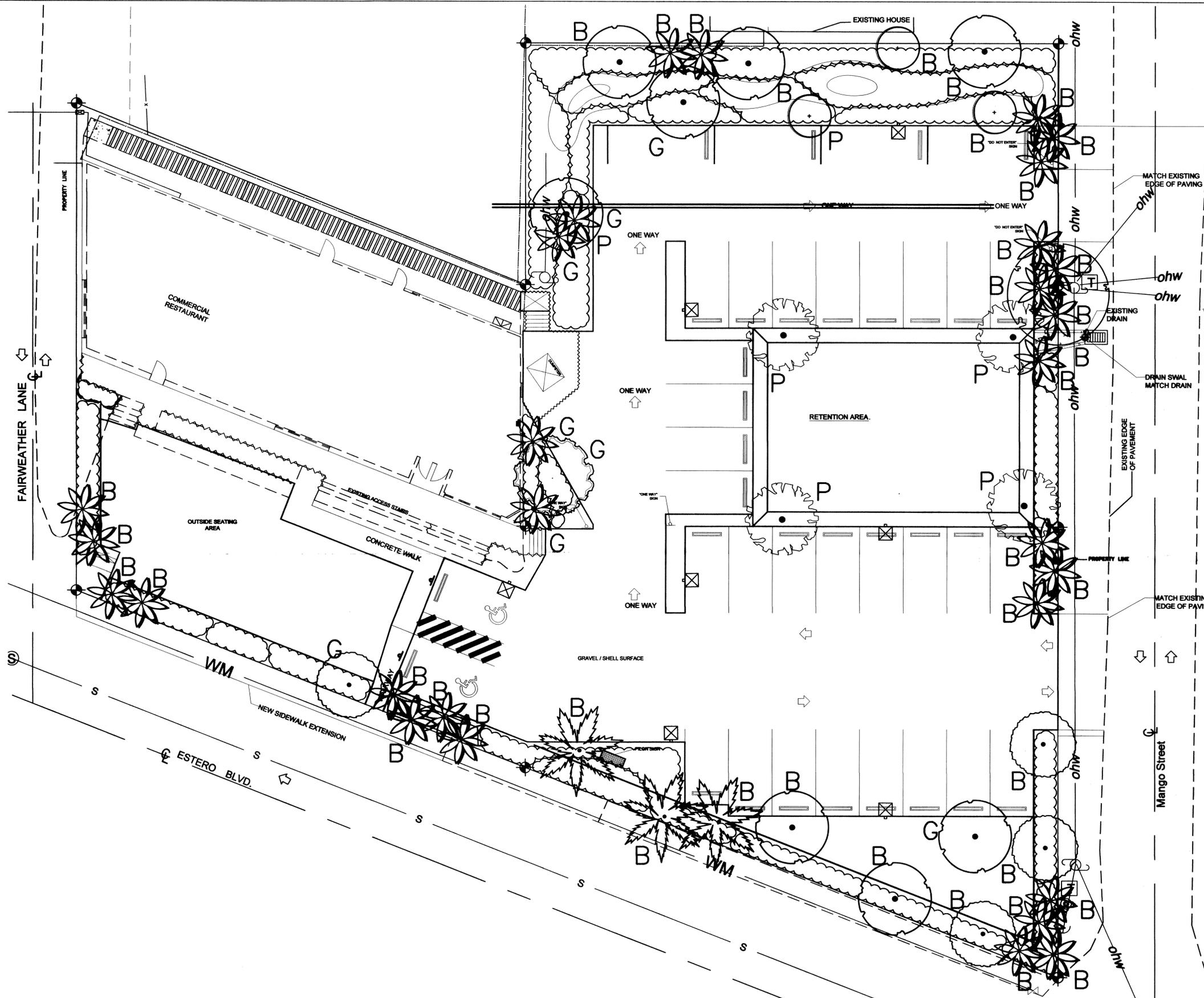
5 TREES PER 100 L.F. REQUIRED (LENGTH- 218 L.F.) (218/100) x 5 - 11 TREES REQUIRED
 11 TREES PROVIDED
 HEDGE 50 SHRUBS PER 100 L.F. REQUIRED (LENGTH - 218 L.F.) (218/100) X 50 - 109 SHRUBS REQUIRED
 109 SHRUBS PROVIDED
 *BUFFER TO BE 5' WIDE

PLANT LEGEND

PALMS			
3	COCONUT PALM	COCOS NUCIFERA	10-12' CT MIN.
26	SABAL PALM	SABAL PALMETTO	10-14' CT MIN.

TREES			
5	BLACK OLIVE	BUCIDA MOLINETTI	8-10' H. MIN.
4	GUMBO LIMBO	BURSERIA SIMARUBA	8-10' H. MIN.
3	HOLLY	ILEX CASSINE	8-10' H. MIN.
2	BUTTONWOOD	CONOCARPUS ERECTUS	8-10' H. MIN.
2	GEIGER	CORDIA SERESTENA	8-10' H. MIN.
2	SATIN LEAF	CHRYSOPHYLLUM OLIVIFORME	8-10' H. MIN.
1	STRANGLER FIG	FICUS AUREA	15-20' H. EX.
1	JACARANDA	JACARANDA MIMOSIFOLIA	8-10' H. MIN.

SHRUBS / GROUNDCOVERS			
50	MYRSINE	RAPANEA PUNCTATA	3G.
40	COCOPALM	CHRYSOBALANUS ICACO	3G.
40	WAX MYRTLE	MYRTICA CERIFERA	3G.
55	BEAUTY BERRY	CALLICARPA AMERICANA	3G.
30	SEAGRAPE	COCCOLOBA UVIFERA	3G.
30	DWARF FIREBUSH	HAMELIA PATENS	3G.
20	MUHLY GRASS	MUHLBERGIA CAPILLARIS	3G.
20	FAKAHATCHEE GRASS	TRIPSACUM DACTILOIDES	3G.
25	DUNE SUNFLOWER	HELIANTHUS DEBILIS	1G.
20	BLANKET FLOWER	GAILLARDIA PULCHELLA	1G.



R.S. WALSH LANDSCAPING, INC.
 8050 PENZANCE BLVD., FORT MYERS, FLORIDA 33912
 TEL: 239-768-5655
 FAX: 239-768-2970
 WWW.RSWALSH.COM

By Helen J. Hendry, Esq.
 Florida Registration #3
 3/7/12

EAGLE EQUITY CAPITAL LLC.
 Town of Fort Myers Beach
 MAR 08 2012
 Received Community Development

2301 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA
LANDSCAPE CONCEPT

REV#	NOTES	DATE
01	PLANT LIST 0' NOTES	3/7/2012

SCALE: 1" = 10'

FILE NAME	LANDSCAPE
ARCHITECTURAL INFORMATION PROVIDED BY:	
COMPANY NAME:	
FILE NAME:	
DATE:	
SITE INFORMATION PROVIDED BY:	
COMPANY NAME:	
FILE NAME:	
DATE:	

EXHIBIT (B)
L.1



EXHIBIT (C)

Memorandum

To: Leslee Chapman, Zoning Coordinator

From: Walter Fluegel, Community Development Director

Date: March 29, 2012

Re: Eagle Equity Capital LLC CPD (DCI2012-001) Traffic Impact Statement Waiver Request

I have reviewed the Planned Development Rezoning submittal requirements, contained in Code Section 34-212, the prior CPD approval for the subject property (as embodied in Resolution 06-30) and the Concurrency Exemptions provided for in Code Section 2-46(a)(2) and determined that pursuant to Sections 34-202 and 34-203, the requirement for a Traffic Impact Statement can be waived at Town Councils' option, subject to the conditions identified below.

FINDINGS

1. The prior CPD Approval (Resolution 06-30) for 5,000 square feet of Restaurant Use states, "A local development order is required prior to any use of the subject property in accordance with this planned development. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order."
2. This request is for 5,859 square feet of Restaurant Use, a net increase of 859 square feet of additional Restaurant square footage over the prior approval, which is due to the increased square footage in outdoor dining area.
3. Town Land Development Code Section 2-46(a)(2) provides a concurrency exemption for, "*Commercial building permits for interior remodeling improvements that are not for the purpose of changing the use of the building and do not increase its floor area.*" Further, subsection (b) provides that "*....the Town Council may evaluate the probable concurrency impacts of such proposed development activities at the earlier stages as one factor in their determination whether or not to approve such activities.*"

Since the building in question was previously occupied as a Dental Office, it could be vested for an amount of trips associated with that type of occupancy. Accordingly, ITE Code 720 specifies a trip generation rate of 3.46 trips per 1,000 square feet for Medical/Dental Offices. ITE Code 931 specifies a trip generation rate of 7.49 trips per 1,000 square feet for Quality Restaurants.

Vested trips based upon prior occupancy:

4,000 sq ft of Medical/Dental Office= **13.84 PM Peak Hour trips**

Projected trips based upon proposed use:

5,859 sq ft of Quality Restaurant= **43.88 PM Peak Hour trips**

Prior approval:

5,000 sq ft of Quality Restaurant= 37.45 PM Peak Hour trips

Projected Increase in trips:

Increase in trips from this request versus Medical/Dental Office=

30.04 PM Peak Hour trips

Increase in trips from this request versus prior approval (Resolution 06-30)=

6.43 PM Peak Hour trips

Section 2-306 of the Land Development Code provides that when change of use, redevelopment, or modification of an existing use requires the issuance of a building permit, impact fees shall be based upon the net increase in the impact fee for the new use as compared to the previous use.

CONDITIONS

Waiver of the Traffic Impact Statement is subject to the following conditions:

1. If Town Council determines that the Traffic Impact Statement can be waived, then the approval should be conditioned upon the following language: "A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees."
2. Should Town Council determine that the Traffic Impact Statement Waiver is not warranted and the application may place an undue burden on road facilities, based upon the previous findings in this memo, then Town Council should consider the following conditions to mitigate those impacts, including a Traffic Impact Statement:

- a. Require the applicant to amend the Master Concept Plan to reduce the outdoor dining square footage to 1,000 square feet, consistent with the prior approval in Resolution 06-30 and maintain Condition 1, as worded above. And/or;
- b. Require the applicant to provide, for review and approval by Town Council, a Traffic Impact Statement that demonstrates the proposed development meets concurrency. In the event the Traffic Impact Statement demonstrates that the proposed development does not meet concurrency standards, the applicant shall provide a Traffic Impact Mitigation Plan to assess alternative mitigation strategies, including the feasibility of providing, for example, an easement on the subject property for a future trolley stop and shelter. The Traffic Impact Mitigation Plan and any requisite amendments to the Master Concept Plan would then require review by the Local Planning Agency and approval by Town Council to effectuate the rezoning.

STAFF RECOMMENDATION

Staff recommends that Town Council **DENY** the request for waiver of the Traffic Impact Statement and condition the CPD approval as follows:

Require the applicant to provide, for review and approval by Town Council, a Traffic Impact Statement that demonstrates the proposed development meets concurrency. In the event the Traffic Impact Statement demonstrates that the proposed development does not meet concurrency standards, the applicant shall provide a Traffic Impact Mitigation Plan to assess alternative mitigation strategies, including the feasibility of providing, for example, an easement on the subject property for a future trolley stop and shelter. The Traffic Impact Mitigation Plan and any requisite amendments to the Master Concept Plan would then require review by the Local Planning Agency and approval by Town Council to effectuate the rezoning.

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2012-005
EAGLE EQUITY CAPITAL CPD

WHEREAS, Eagle Equity Capital, LLC, owner of property located at 2301 and 2311 Estero Boulevard and 111 and 121 Mango Street Fort Myers Beach, Florida has requested an amendment to expand the existing CPD, formerly known as Big John's Board Walk Eatery, to allow for required parking on-site for the existing restaurant uses, in addition to stormwater management, and landscape buffers; and

WHEREAS, the subject property is located in the both the Boulevard and Mixed Residential and Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP numbers for the properties are 19-46-24-W3-0110D.0010, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020 and 19-46-24-W3-0120E.0030; and

WHEREAS, the legal description for the properties is Lots 1 and 2, Block D of Beach Estates subdivision, according to the plat thereof recorded in Plat Book 6 Page 68; and Lots 1, 2, and 3, Block E of Seagrape subdivision, according to the plat thereof recorded in Plat Book 4 Page 17 of the Public Records of Lee County, Florida; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on April 10, 2012; 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** the request to amend the CPD zoning for the subject property subject to the **9 conditions** and **11 deviations** set forth with specificity below.

RECOMMENDED CONDITIONS OF APPROVAL:

1. If the principal building on the subject property (2301 parcel) is removed or replaced for any reason, deviations 3, 4, 5, 6, and 7 will become null and void. Any new buildings replaced on the subject property must comply with required setbacks and any other regulations in effect at the time of permitting.
2. That the trolley stop concrete bench as shown on the southwest corner of the subject property, generally at the intersection of Fairweather Street and Estero Boulevard, be moved to the southeast corner of the subject property, generally near the intersection of Mango Street and Estero Boulevard.

3. Any changes or fracturing of ownership of the four parcels within the subject property will require, at a minimum, an administrative amendment to the Mast Concept Plan to reflect the change in ownership, which will include recorded unified control documentation.
4. The parking lot must be stabilized in accordance with the provisions in Section 34-2017(b)(1).
5. A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees.
6. That a Traffic Impact Study (TIS) is not warranted and Town Council should overrule the Director's decision to require a TIS. The applicant has provided mitigation for any traffic impacts by providing the following: additional on-site parking for tenants and customers, landscape buffers, bike racks, extension of the sidewalk along Estero Boulevard in front of the property, elimination of the back out parking in front of the existing building, reduction of the outdoor dining to 1,000 square feet, and storm water management improvements. The current restaurant use has demonstrated that it is mainly a pedestrian and bicycle oriented destination and, as a result, the traffic impacts may actually be less than would be expected from a traffic impact study.
7. Bicycle racks shall be provided for a minimum of 8 bicycles.
8. The hours of operation for business use are 6am to 12 midnight. The hours of operation for indoor restaurant uses are 7 am to 12 midnight with outdoor seating area limited to between the hours of 7am and 10 pm, seven days a week.
9. No outdoor entertainment is permitted.

RECOMMENDED APPROVED DEVIATIONS:

Deviation #1

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14-15 foot Type C buffers without a wall, as indicated on the MCP and landscape plan.

APPROVE

Deviation #2

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15 foot Type D buffer between parking areas and right-of-way, to allow for a 5 foot Type D buffer between parking areas and right-of-way.

APPROVE

Deviation #3

Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building.

APPROVE

Deviation #4

Deviation from the requirements of LDC Section 34-707(b)(1)a, which requires a minimum 10 foot street setback to allow for a 2.39 foot street setback from Fairweather Lane to accommodate the existing building.

APPROVE

Deviation #5

Deviation from the requirement of LDC Section 34-704(b)(1)b, which requires a minimum 20 foot rear setback, to allow for a two-foot rear setback to accommodate the existing building.

APPROVE

Deviation #6

Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal façade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal façade to be 16 feet in length.

APPROVE

Deviation #7

Deviation from the requirements of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane.

APPROVE

Deviation #8

Deviation from LDC Section 34-2020(d)(2)h, which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 47 required parking spaces) to allow for a 30% reduction from the LDC requirement for a total of 34 provided spaces.

APPROVE

Deviation #9

Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.

APPROVE

Deviation #10

Deviation from LDC Section 34-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96± feet of connection separation along Mango Street.

APPROVE

Deviation #11

Deviation from LDC Section 10-289(d) which requires an 8 foot wide sidewalk along the property's Estero Boulevard frontage, to allow for a 5 foot wide sidewalk.

APPROVE

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 the planned development zoning approval, the LPA recommends that Town Council make the following findings and reach the following conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*
Resolution 06-30 did not specifically address parking for the restaurant uses as an on-site condition. This ambiguity in on-site parking requirements is being addressed and corrected with the proposed amendment to the CPD. **APPROVE**

2. *Whether there exist changed or changing conditions which make approval of the request appropriate.*
A single property owner has acquired all four parcels, 2301 and 2311 Estero Boulevard and 111 and 121 Mango Street, which comprise the subject property. This change in ownership allows for the required parking on the 2301 parcel to effectively be accommodated on-site. However, in order to permit an increase of commercial uses on parcels within the Boulevard and Mixed Residential FLU categories, a commercial planned development rezoning or amendment is required. **APPROVE**

3. *The impact of a proposed change on the intent of this chapter.*
The proposed amendment to the CPD will implement the provisions found in Section 34-702, the Commercial Boulevard zoning district, which requires rezoning to Planned Developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code. **APPROVE**

4. *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 the staff report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Boulevard and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process.

It is important to note, however, that this CPD amendment request provides the Town with an opportunity to add a trolley pull-out at this location. Policy 7-D-2(ii) suggests that these trolley pull-offs can be installed when improvements to Estero Boulevard are constructed, but that policy also states that trolley pull-offs can be "required by the Land Development Code during the redevelopment process." **APPROVE**

5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
The request to amend the CPD for 2301 Estero to include land at 2311 Estero, 111 Mango and 121 Mango meets and exceeds all performance and locational standards for the proposed uses. No new structures or substantial improvements are proposed, therefore the Commercial Design Standards that are found in Section 34-991 and subsequent sections of the LDC do not apply. Furthermore, the proposed amendment is consistent with Policy 4-C-2 which requires that commercial uses in the Boulevard and Mixed Residential FLU be

designed to contribute to the pedestrian experience and to provide services for overnight guests and residents. **APPROVE**

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

The applicant has provided Letters of Availability from Beach Water and Lee County Utilities, demonstrating water and sewer service capacity and availability. **APPROVE**

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

As existing commercially developed and vacant lots located on interior parcels of land away from both the Matanzas Pass waterfront and the Gulf of Mexico and beach, the subject property does not include any sensitive and/or environmentally critical lands. However, any lighting visible from the beach and/or included on development order plans will be required to meet all applicable environmental codes including, but not limited to, Sea Turtle lighting requirement as found in LDC Section 14-79. **APPROVE**

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

The property owner has recently made façade improvements and repairs to the existing building on the subject property. The CPD amendment proposes additional improvements and installations that will have a significant positive impact on the pedestrian experience, resident and visitor alike, and the overall aesthetic appeal of the subject property. Elimination of back out parking, installation of landscape buffers, and opportunity for new business ventures will serve to enhance the immediately surrounding area. The redevelopment of the subject property will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property. **APPROVE**

9. *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.*

The increase of trips from the prior approval of Resolution 06-30 is 6.43 peak hour trips. However, the site design improvements that accompany the requested CPD amendment demonstrate a significant improvement to bicycle and pedestrian safety and contribute to the overall positive visual appearance along the subject property's Estero Boulevard frontage. That being said, this request does present an opportunity to provide for a trolley pull off easement that would dramatically improve the public transportation system in the Town while possibly offsetting the additional vehicular trips generated by this request. **APPROVE**

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

Joanne Shamp, Chair	AYE	Al Durrett, Member	AYE
Hank Zuba, Member	AYE	John Kakatsch, Member	AYE
Alan Smith, Member	AYE	Jane Plummer, Member	AYE
Dan Andre, Member	AYE		

DULY PASSED AND ADOPTED THIS 10th day of APRIL, 2012.

Local Planning Agency of the Town of Fort Myers Beach

By: Joanne K. Shamp
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: Marilyn W. Miller
Marilyn W. Miller, Esquire
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
April 10, 2012

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Joanne Shamp; other members present:

Dan Andre
Al Durrett
John Kakatsch
Jane Plummer – arrived at 9:02 a.m.
Alan Smith
Hank Zuba

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Chapman, Zoning Coordinator
Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Hank Zuba

IV. MINUTES

A. Minutes of February 13, 2012

MOTION: Mr. Kakatsch moved to approve the February 14, 2012 minutes; second by Mr. Durrett.

Mr. Zuba noted a typographical error on page 6: Ms. Zuba to Mr. Zuba.

VOTE: Motion passed 7-0.

V. PUBLIC HEARING

A. FMBDCI2012-0001 Eagle Equity Capital CPD

Ms. Shamp opened the hearing at 9:06 a.m.

Zoning Coordinator Chapman entered the Affidavit of Publication into the record.

Ms. Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

Ms. Shamp asked if any LPA Member had ex-parte communication regarding this item. Mr. Smith – reported he visited the subject property to compare the drawings with the existing conditions; Mr. Zuba – none; Mr. Durrett – none; Ms. Shamp – stated she conducted a site visit; Ms. Plummer – stated she had ex-parte communications, that she had been in attendance at the prior case in 2006, and noted she lived within close proximity of the subject site and had established a relationship with the tenant in the existing building; Mr. Kakatsch – stated he owned property on Fairweather Lane and conducted a site visit; and Mr. Andre – noted the close proximity of the subject site to his inn and had established a relationship with the tenant in the existing building.

Ms. Alexis Crespo of Waldrop Engineering representing Eagle Equity Capital distributed a copy of the applicant's updated landscape plan.

Mr. Zuba questioned if staff had reviewed the landscape plan that was distributed.

Ms. Chapman responded in the negative; however, she noted it was not part of the zoning request and Ms. Crespo offered it to assist with the applicant's description of their intent.

Ms. Crespo presented comments for FMBDCI2012-0001 on behalf of the applicant Eagle Equity Capital (CPD). She reviewed the applicant's request to expand the existing CPD, formerly known as Big John's Board Walk Eatery that had been approved in 2006 per Resolution 06-30 which allowed for required parking on-site for the existing restaurant uses, in addition to stormwater management, and landscape buffers. The amendment would add in an additional 4.43 acres which were currently zoned Commercial Boulevard and Residential Multi-Family. She explained the purpose of the CPD expansion was to allow for supportive parking for the restaurant uses, in addition to stormwater management, and landscape buffers. She used a PowerPoint presentation to review and describe the current and proposed boundaries of the subject property; existing zoning locations; site of the subject property, existing parking conditions; vacant land that was intended for inclusion of CPD amendment and surrounding properties; and the existing uses of the surrounding properties. She reported the applicant was unable to attend today since Mr. Bell was out-of-state, but noted the investment he had made in the Town, as well as the improvements made to the restaurant by the tenant. She continued her presentation with an overview of the project's history and the proposed amendment which included but was not limited to zoning, land use, the previous CPD application in 2006 which had been denied largely due to the lack of on-site parking which resulted in the applicant's appeal to the denial using the Florida Land Use and

Environmental Dispute Resolution Act and eventual approval with conditions; and the approved Master Concept Plan as of today. She pointed out that the subject property would not be a 'vehicle generator'. She stated the applicant intended to develop the site in a pedestrian-friendly manner to allow near-by residents to access the property by foot and bicycle. She mentioned that compatibility and intrusion was addressed in the original CPD regarding the hours of operation. Ms. Crespo summarized that the applicant obtained the property in 2011, acquired the three adjacent properties along Mango Street in 2010 as part of his Neptune Inn purchase, and that the applicant now wanted to address the past parking issues since he now owned the additional properties. She explained that within the proposed Master Concept Plan:

- The 4,000 square foot building was not proposed for expansion, and there were no additional structures to house restaurant uses
- The most significant change was the addition of a parking lot area which would remove the 'back-out' parking from Estero Boulevard and allow for ingress/egress on Mango Street
- Thirty-four (34) spaces were proposed
- Type D buffers along all adjacent rights-of-way along Estero Boulevard, Mango Street, and Fairweather Lane (5 feet in width)
- Type C buffers on the north abutting single-family residential uses
- On-site retention area was significantly increased over the proposed CPD

Ms. Crespo continued her presentation with a description of the proposed pedestrian orientation improvements such as:

- A five foot wide sidewalk along the frontage
- Sidewalk entrance directly to the building
- Bicycle rack
- Relocation of the trolley stop to the Fairweather Lane/Estero Boulevard corner; she noted staff's concern on this proposal and that the applicant was amenable to making a change to the Master Concept Plan to keep the trolley stop at the existing location of Mango Street/Estero Boulevard

Ms. Crespo then highlighted the improvement to safety issues by eliminating the 'back-out' parking, and the environmental benefits from the enhanced stormwater management and landscape buffers. She reported the applicant was amenable to reducing the outdoor dining square footage to 1,000 square feet in the Master Concept Plan, and to provide some type of gating or landscape area to insure COP was contained within the designated area. She reviewed the Schedule of Uses requested in accordance with Resolution 06-30:

- The 4,000 square foot building was not proposed for expansion.
- There was a slight increase to the outdoor seating area from 1,000 to 1,859 square feet,
- The COP was reformatted in the Schedule of Uses and the applicant was requesting both indoor and outdoor COP which was limited to wine and beer only, in conjunction with a meal.

Ms. Crespo next reviewed the deviations and noted that many were required due to the existing building which was constructed prior to land development codes being in place:

- Deviation #1 – she noted the fence had already been installed by the applicant; and Type C buffering where the parking area abuts the single-family use along Mango Street the applicant proposed a buffer ranging from 14-17 feet with type C plantings; and the applicant was requesting to eliminate the wall due to maintenance issues and the fact that there was no buffer

today, and what was proposed would significantly screen the residences from the proposed parking.

- Deviation #2 – applicant was seeking a 5 foot Type D buffer due to the infill nature of the site.
- Deviations #3, #4, & #5 – were previously approved by Resolution 06-30 and requested continuation of the deviations based upon the existing nature of the site.
- Deviation #6 – noting the deviation requested was in line with the Commercial Design Standards, she asked for continuance since the existing building had a primary façade of six feet based upon the significant renovations that have not impacted the Town’s health, safety, and welfare.
- Deviation #7 – the existing building was located 48.5 feet from the intersection.
- Deviation #8 – applicant was seeking approval to allow a reduction from 47 required parking spaces to 34 parking spaces; she noted a vast majority of patrons arrived by bicycle or by foot.
- Deviation #9 – applicant requested crushed shell or a limerock surface instead of a paved surface which would be consistent with the character of the beach.
- Deviation #10 – applicant requested a 96 foot \pm connection separation along Mango Street.
- Deviation #11 – applicant requested a 5 foot wide sidewalk instead of an 8 foot wide sidewalk along Estero Boulevard frontage which would be similar to the sidewalks constructed on adjacent properties.

Ms. Crespo continued her presentation noting that staff had recommended approval of the deviations and asked for the LPA’s approval as well. She stated the applicant had received availability letters for potable water and sanitary sewer from the appropriate authorities. She addressed the TIS waiver, and noted the applicant was not seeking additional intensity and how the site was not generating vehicles from out of the area (i.e. Bonita Springs). In order to mitigate any traffic concerns, she pointed out that the proposed improvements would make the site more pedestrian-friendly. She requested the LPA approve the request to reduce the outdoor seating square footage to what was approved today and allow the applicant to move forward through the process without the TIS requirement. Ms. Crespo briefly discussed Comprehensive Plan Compliance for the CPD amendment such as but not limited to the FAR (Floor Area Ratio), the mixed residential use category along Mango Street and buffering, parking, and the trolley stop. She addressed the application’s compliance with the land development code with respect to staff’s concerns regarding ‘errors and ambiguity’, Chapter 34, location standards, natural resource protection, compatibility and protection of health safety and welfare, and public infrastructure. She stated that staff had recommended approval of the application and all deviations and six conditions. She reported the applicant was in general approval with staff’s recommendation; however, the applicant would like Condition #6a to move forward to reduce down the square footage to what was currently approved in the CPD.

Mr. Bryan, owner of the restaurant, reported the surrounding neighborhood was in support of his business.

Ms. Shamp asked for clarification regarding Resolution 06-30 and that the hours of operation would not change.

Ms. Crespo responded in the affirmative.

Mr. Andre questioned if the proposed bicycle rack held 4-6 bicycle.

Ms. Crespo responded in the affirmative; and stated the applicant was amenable to increasing the number of racks.

Mr. Andre questioned if the proposed trolley stop would sacrifice parking spaces.

Ms. Crespo responded in the affirmative; and stated it would utilize approximately four spaces and that the handicapped spaces would also be impacted.

Discussion was held regarding the proposed relocation of the trolley stop from Mango Street to Fairweather Lane.

Ms. Plummer discussed her concerns regarding some of the plantings proposed for buffering (i.e. Gumbo Limbo).

Ms. Crespo stated the applicant was not 'tied' to any specific vegetation, but the applicant did want to use 100% Florida native plants/trees. She explained she would work with the applicant regarding the concerns about the vegetation.

Ms. Shamp noted that shade trees were important on the Island. She questioned the height from the deck to the ground.

Ms. Crespo stated that they now intended to use brick pavers instead of a deck, and they would have to show a barrier within the Development Order plans.

Ms. Shamp questioned if there should be a time limit on the parking lot surface to be paved so as to coincide with the improvements to Estero Boulevard in the 5-Year CIP.

Community Development Director Fluegel reported the LPA could include a condition that within a certain number of years the parking lot would have to be paved; however, he added that those types of conditions seem to get lost over time.

Ms. Crespo explained that the cost to pave versus crushed shell or lime rock was considerably higher.

Ms. Shamp questioned if the resident that abuts the subject property was happy with the stockade fence and buffering.

Ms. Crespo stated it was her understanding from Mr. Bell that the resident was acceptable to the fence and buffering.

Ms. Shamp discussed her views on expanding the sidewalk from five to eight feet, if the reduction in parking was approved.

Mr. Zuba questioned the rationale for the deviation requests concerning the setbacks.

Ms. Crespo explained they were previously approved in Resolution 06-30.

Mr. Zuba questioned the intersection right-of-way lines.

Community Development Director Fluegel explained the separation (Mango Street) staff felt was the greater good instead of the 'back-out' parking onto Estero Boulevard, and that stacking should not be that much of an issue.

Mr. Zuba asked why the applicant felt the amendment would create more pedestrian traffic and less vehicular.

Ms. Crespo explained was based upon the close proximity of the hotels and residences; and noted that during the past six weeks during peak season that the current nine parking spaces were never all full. She reported the restaurant owner had been recording his patrons' transportation and he believed that 80% of his customers were pedestrian or bicycle.

Discussion was held regarding the surface parking lot spaces and problems with delineating spaces on crushed shell.

Ms. Crespo stated the handicapped spaces would be paved, and bumper stops would be installed on the crushed shell or limerock area to indicate spaces.

Mr. Zuba concurred with Ms. Shamp's recommendation regarding an eight foot sidewalk instead of five.

Mr. Kakatsch stated he did not oppose shell or gravel parking. He questioned where delivery trucks would unload.

Mr. Bryan stated usually the trucks would stop short of the residential property and back-up to the fence. He said he was working to not impact the neighborhood.

Discussion was held regarding the pitch in the front of the property.

Mr. Durrett discussed his experience with using gravel in the parking area and how it allowed the water to flow better.

Discussion was held concerning the proposed bumper stops in the parking lot, the width of the proposed sidewalk, and the width of the surrounding sidewalks.

Zoning Coordinator Chapman presented comments for FMBDCI2012-0001, Eagle Equity Capital CPD, on behalf of the Town of Fort Myers Beach. She read into the record an email she received as a result of the notification mailing associated with FMBDCI2012-0001. The email was from the property owner adjacent to the subject site, Mr. Gary Dye:

-----Original Message-----

From: gdye001@wi.rr.com [mailto:gdye001@wi.rr.com]

Sent: Monday, April 09, 2012 11:12 PM

To: Leslee Chapman

Subject: Case Number FMBDC12012-0001

Hello Leslee,

Per my telephone conversation, these are some concerns I have regarding my property at 110 Fairweather Lane.

- 1) Providing screening across the back yard of my property where anticipated parking lot will be. I am concerned about providing an adequate block for car lights and noise.
- 2) Rear elevated walk across the back of the building which is along side of my property. Concerned about employees using this for break area/smoking area as they will be visible over 8 foot fence and will be able to look into back yard and house windows. I do not want this area used for deliveries or Garbage storage/removal. This area should be kept clean from debris. This area should only be used for emergency exit to protect our privacy.
- 3) These same concerns were addressed and resolved regarding Big John's Board Walk Eatery and should be in those previous minutes.

Please contact me with any questions.

Sincerely,

Gary Dye, owner
110 Fairweather Lane
Fort Myers Beach, FL

Phone: 262-968-3222 (Evenings)

Cell: 262-470-9799

She complimented Ms. Crespo for her presentation and stated she would try to address concerns or questions that she believed the LPA noted during the previous presentation. She highlighted again the key features of the Master Concept Plan which staff felt were critical in reviewing the request:

- Elimination of the 'back-out' parking along the front was a positive change as it pertained to public safety
- Applicant's proposed on-site water management was an improvement
- Improved residential screening and buffering was an improvement
- Providing the sidewalk along Estero Boulevard was an improvement regardless of width
- Crushed shell or pervious surface in the parking lot was an improvement
- Landscaping materials and outdoor seating for two restaurants was an important feature; and the outdoor seating did include COP

Zoning Coordinator Chapman addressed deviations and where they applied on the Master Concept Plan, and reviewed the basis for staff's recommendation for approval for each of the 11 deviations. She reviewed each of the recommended Conditions of Approval:

1. If the principal building on the subject property (2301 parcel) is removed or replaced for any reason, deviations 3, 4, 5, 6, and 7 will become null and void. Any new buildings replaced on the subject property must comply with required setbacks and any other regulations in effect at the time of permitting.
2. That the trolley stop concrete bench as shown on the southwest corner of the subject property, generally at the intersection of Fairweather Street and Estero Boulevard, be moved to the southeast corner of the subject property, generally near the intersection of Mango Street and Estero Boulevard.
3. Any changes or fracturing of ownership of the four parcels within the subject property will require, at a minimum, an administrative amendment to the Master Concept Plan to reflect the change in ownership, which will include recorded unified control documentation.
4. The parking lot must be stabilized in accordance with the provisions in Section 34-2017(b)(1).

Community Development Director explained in detail the basis for recommended Conditions #5 and #6.

5. A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees.
6. Should the Town Council determined that the Traffic Impact Waiver is not warranted and the application may place an undue burden on road facilities, based upon staff analysis, then Town Council should consider the following conditions to mitigate those impacts, including a Traffic Impact Statement:
 - a. Require the applicant to amend the Master Concept Plan to reduce the outdoor dining square footage to 1,000 square feet, consistent with the prior approval in Resolution 06-30 and maintain Condition 5, as worded above; and/or
 - b. Require the applicant to provide a Traffic Impact Statement that demonstrates the proposed CPD amendment meets concurrency for review and approval by Town Council. In the event the Traffic Impact Statement demonstrates that the proposed CPD amendment does not meet concurrency standards, the applicant shall provide a Traffic Impact Mitigation Plan to assess mitigation strategies, including the feasibility of providing an easement on the subject property for a future trolley stop and shelter, as a mitigation strategy. The Traffic Impact Mitigation Plan and any requisite amendments to the Master Concept Plan would then require review by the Local Planning Agency and approval by Town Council to effectuate the rezoning.

Zoning Coordinator Chapman continued her presentation on behalf of the Town noting the applicant was amenable to increasing the number of bicycle racks and staff would be supportive of additional racks; discussed the trolley stop bench; the quantity of the plantings which were code required numbers, and indicated staff could work with the applicant regarding the type of plantings and spacing; and the connection/separation on Mango Street.

Mr. Kakatsch discussed his belief to support five foot sidewalks. He recommended Community Development Director Fluegel investigate a five foot sidewalk and a bicycle lane at the time when the County performed the improvements to Estero Boulevard.

Discussion was held concerning an easement for a future trolley stop and shelter as a mitigation strategy; and potential concurrency issues and Traffic Impact Statement.

Ms. Crespo stated the applicant believed they could demonstrate through the DO process that the trip generation was minimal and there would not be a concurrency issue.

Discussion continued regarding the trolley stop and pull-off.

Ms. Shamp asked if the design for Estero Boulevard indicated a separate bicycle lane.

Community Development Director Fluegel responded in the affirmative.

Discussion was held concerning how to increase the number of bicycle racks; using Condition 6a or 6b; using Chapel-by-the-Sea as a trolley stop; the current trolley stop location; plantings in the trolley stop area; the differences between Condition 6a and 6b; and the additional parking at the subject site.

Public Comment opened.

Nancy Lynn Van Oyen, resident, discussed the basis of why she approved of the proposed improvements. She stated the subject site had been an eyesore to the neighborhood and attracted vagrants. She requested the LPA approve the requested amendment. She explained why she did not believe the proposed trolley pull-off was appropriate and discussed other potential locations for a trolley stop along Estero Boulevard. She also discussed her opinion regarding sidewalks and the sidewalk width.

Public Comment closed.

Mr. Andre questioned what was required of the seasonal parking lot across Mango Street.

Community Development Director Fluegel stated seasonal parking lots were not required to do traffic studies since there was no building or use on the property to generate traffic.

Discussion was held concerning elements or conditions that could be included in a motion for Resolution No. 2012-005.

Ms. Shamp noted the inclusion from Resolution 06-30, *the general schedule of uses of the subject property is hereby limited to provide that the hours of operation of any business on the subject property must not commence earlier than 6:00 a.m. and must terminate not later than 10:00 p.m. the hours of operation for the restaurants are limited from 7:00 a.m. to 10:00 p.m., Sunday through Thursday and*

11:00 p.m., Friday and Saturday. She noted Resolution 06-30 also prohibited outdoor entertainment on the subject property.

Mr. Zuba discussed why he believed Condition #6 should not be mentioned or be included as a condition.

Ms. Shamp offered a counter opinion to Mr. Zuba's comment.

Ms. Shamp asked for a show of hands for recommended Condition #6, a or b – 3.5 members indicated in favor. She asked the same for Mr. Zuba's recommendation to eliminate Condition #6 - 3.5 members indicated in favor.

Discussion ensued regarding the impact to the applicant selecting Condition #6 a, #6b or removing Condition #6; and the cost of a traffic impact fees at Development Order (DO); and the benefit or detriment to the applicant depending upon if Condition #6a or #6b was selected.

Ms. Shamp asked for a show of hands for leaving out Condition #6 completely – 2 members; for leaving in Condition #6a – 4 members and 1 undecided; for leaving in Condition #6b – no members.

Discussion was held concerning mitigation and the trolley stop, and the Development Order process.

Mr. Bryan asked if there was someone in the Town or County who could waive a Traffic Impact Study.

LPA Attorney Miller reviewed Section 10-286 regarding the traffic impact study.

Discussion was held regarding waivers, and the definition of a traffic impact statement and traffic impact study.

Community Development Director Fluegel reviewed the criteria and definition of a traffic impact statement in a Development Order. He noted in Section 10-152 that *the Director may waive the requirement for any submittal item which he deemed unnecessary for an adequate review of the proposed development.* He pointed out another section in the Code that allowed him to make a determination that there would be no impacts on the public infrastructure above and beyond what existed.

Ms. Shamp questioned if the Director could waive the Traffic Impact Statement based upon the Section 10-152.

Community Development Director Fluegel pointed out that particular deviation had not been requested or advertised.

Discussion was held regarding the Traffic Impact Statement; and the ability to appeal the Director's decisions to Council.

LPA Attorney Miller explained the LPA could modify Condition #6 to be a recommendation that the LPA does not believe the Traffic Impact Study was warranted and that the Council overrule the Director's decision to require it.

Discussion ensued concerning a modification to Condition #6 which would recommend that the LPA did not believe the Traffic Impact Study was warranted and that the Council overruled the Director's decision to require one.

Ms. Crespo stated she believed the reasoning behind not requesting a waiver from the DO requirement was because the applicant originally thought it would be a limited review which did not require a TIS.

Mr. Andre noted on Page 7 of 16, Staff Report, that the proposed amendment to the CPD was focused on providing additional on-site parking for the tenants and customers of the existing commercial building, by providing landscape buffers, bike racks, extending the sidewalk and improving ingress/egress by eliminating the back-out parking, reduction in seating area, and the stormwater management.

Ms. Shamp suggested that if someone wanted to make the motion, Condition #6 could be that the LPA recommended that the TIS was not warranted and recommend the Council overrule the Director's decision to require it based upon the action of the applicant which would be the wording as noted on page 7 of 16: "by providing additional on-site parking for the tenants and customers of the existing commercial building, by providing landscape buffers, bike racks, extending the sidewalk and improving ingress/egress by eliminating the back-out parking, reduction in seating area, and stormwater management".

Discussion was held concerning adding a Condition #7 to increase the number of bicycle racks; and Mr. Andre recommended changing 4 to 8 racks.

Mr. Kakatsch asked if the defunct gas station on the corner was an issue for the restaurant.

Community Development Director Fluegel responded that he could not foresee any issues.

Mr. Durrett stated the restaurant's customer base would dictate how many bicycle racks were needed.

Discussion was held regarding the hours of operation; Mr. Bryan stated at this time he had no need to stay open after 10:00 p.m.; whether or not to address extending hours of operation at this time; and the hours of operation for nearby establishments with COP.

Mr. Durrett suggesting changing the hours of operation for Mr. Bryan to end at midnight for inside and end outside at 10:00 p.m.

MOTION: Mr. Andre moved that the LPA recommends the Town Council approve Resolution No. 2012-005, Eagle Equity Capital CPD, for the request to rezone the subject property to a

CPD zoning district subject to the 9 conditions and 11 deviations set for with specificity below:

Recommended Conditions of Approval

1. As written.
2. As written.
3. As written.
4. As written.
5. As written.
6. The LPA recommends that the Traffic Impact Study was not warranted and that the Town Council overrule the Director's decision to require such; and the applicant has provided mitigations for traffic impacts according to Page 7 of 16, by providing additional on-site parking for the tenants and customers, by providing landscape buffers, bike racks, extending the sidewalks along Estero Boulevard, by eliminating the back-out parking in front of the existing building, by reducing the outdoor dining, and by providing stormwater management; and mitigation was also provided by the fact that it was strongly a pedestrian and bicycle oriented destination additional and the traffic impact was less than would be expected by the Traffic Impact Study.
7. Bicycle racks shall be provided for 8 bicycles.
8. Hours of operation shall be from 7:00 a.m. to midnight with outdoor seating limited from 7:00 a.m. to 10:00 p.m. (restaurant).
9. No outdoor entertainment.

Recommended Approved Deviations

Deviations #1 through #11 approved as written.

Recommended Findings and Conclusions

Findings and Conclusions #1 through #9 approved as written.

Second by Mr. Smith.

VOTE: Motion passed, 7-0.

Ms. Shamp closed the hearing at 12:14 p.m.

MOTION: Ms. Plummer moved to adjourn the LPA and reconvene as the HPB; second by Mr. Kakatsch.

VOTE: Motion approved, 7-0.

**ADJOURN AS LPA AND RECONVENE AS HISTORIC PRESERVATION BOARD
12:15 P.M.**

Ms. Plummer reported the last scheduled meeting for the Historic Advisory Committee was canceled due to the illness of members. She requested advertising for additional HAC members.

Discussion was held concerning the composition and number of members, and quorum requirements for the HAC.

MOTION: Ms. Shamp moved to become a member of the HAC; second by Mr. Zuba.

VOTE: Motion approved, 6-0; Mr. Smith absent from Chambers.

Josh Overmyer, Staff Liaison to the Historical Advisory Committee, reported he sent an email to help insure there would be a quorum for the April 24th meeting, and he would forward the email to Ms. Shamp.

Ms. Shamp stated she found her files from previous HPB and HAC meetings regarding the brochure designs and plaque designs, and stated she would give copies to the Town Clerk, Staff Liaison Overmyer, and Ms. Plummer.

MOTION: Mr. Kakatsch moved to adjourn the HPB and reconvene as the LPA; second by Ms. Shamp.

VOTE: Motion carried, 7-0.

**ADJOURN AS HISTORIC PRESERVATION BOARD AND RECONVENE AS LPA
AT 12:19 P.M.**

VI. LPA MEMBER ITEMS AND REPORTS

Mr. Kakatsch recommended to Community Development Director Fluegel that Code Enforcement address the convenience store and defunct gas station. He added that the side of the store was covered with graffiti; and noted the ‘three grey buildings’ on Estero Boulevard that were a mess.

Community Development Director Fluegel gave an update on the buildings. He reported the Town contacted the County with a request to inspect the buildings as unsafe structures. He added the inspection was completed and the County deemed them as unsafe, and now staff could work through the process towards condemnation. He commented that the owner would have the option of demolition first, and if the owner refused, then the Town would request Council to approve condemnation and demolition.

LPA Attorney Miller explained that an unsafe designation gives the owner 60 days to obtain a demolition permit and an additional 120 to complete the actual demolition. The cost of the demolition if accomplished by the Town would appear as a lien on the property which would survive a mortgage foreclosure.

Mr. Kakatsch recounted his experience with the Fort Myers Code Enforcement Board in similar situations.

Mr. Durrett – reported he contacted the BOCC in the capacity of a business owner from Santini Plaza as it pertained to the recent pedestrian fatality. He discussed his belief for changes to the Town’s streetscape long before the improvements to Estero Boulevard. He would like to continue his efforts regarding lighting, speed limits, and safety issues by applying for the Town’s recently formed Traffic Mitigation Agency.

Discussion was held concerning the TMA.

MOTION: Ms. Shamp moved that the LPA was concerned about the safety and welfare of the citizens and there had been deaths at the subject location (Santini Plaza), and if a committee were formed, the LPA would support Mr. Durrett as a liaison representative from the LPA; seconded by Ms. Plummer.

VOTE: Motion carried, 7-0.

Mr. Zuba – no items to report.

Ms. Shamp – reported that at the Joint Council/LPA Meeting they discussed post-disaster recovery and that there had been a previous draft ordinance. She stated she gave a written copy and the date of the email used for the draft ordinance to the Town Clerk. She addressed the LPA’s previous resolution honoring Mr. Ryffel, and the LPA’s desire for the flagpole at Crescent Beach to memorialize Mr. Ryffel. She asked for the LPA’s approval of the letter.

Community Development Director Fluegel suggested the letter be forwarded to Town Council who may want to prepare a resolution and cover letter to send along with the LPA’s documents to the BOCC.

Ms. Plummer – recounted her experience with owning a gas station in Indiana as it pertained to pulling the gas tanks. She requested if the Financial Disclosure Forms could be distributed at the May meeting in order to meet the June 1st deadline.

Community Development Director Fluegel suggested Ms. Plummer contact the Supervisor of Elections for the necessary forms. LPA Attorney Miller stated the forms were also listed on the Ethics Commission website, and that the Town Clerk had information on the forms.

Mr. Smith – no items to report.

Mr. Andre – discussed his concerns regarding ‘seasonal parking’ and code issues with the seasonal parking lot on Mango Street across from the t-shirt shop. He reported he received an email concerning what was referred to as graffiti on a building which was actually a mural of a sea turtle that had been painted as part of an Eagle Scout project. He added that Turtle Time had agreed to provide the funds to restore the mural.

Mr. Kakatsch noted the graffiti was on the opposite side of the subject building, and not the side where the turtle was painted.

Ms. Plummer asked for an update on code enforcement for the garbage floating in the 'mold pond' in front of Top'O Mast. Community Development Director Fluegel stated he would request Code Enforcement to visit the site.

Discussion was held regarding COP for Lani Kai, Top 'O Mast, and boundary lines for serving on the beach as was discussed at the Council Meeting. Ms. Plummer clarified that the LPA was not asked to vote a certain way due to comments made by speakers at the subject Council Meeting.

Mr. Durrett recognized a reporter from NBC-2 News, who introduced herself and noted she had recently been assigned to the barrier islands.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items to report.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – no items to report.

IX. LPA ACTION ITEM LIST REVIEW

Ms. Shamp noted the Town Council was adding an "LPA box" to their Agenda Management List and pointed out the LPA item on the list was the post-disaster recovery.

Community Development Director Fluegel reported parasailing was introduced and beach raking was discussed at a Work Session, and those topics would go back to Council after the COP was finished.

Mr. Kakatsch indicated he would still represent the LPA regarding beach raking.

Ms. Shamp noted no representation was needed for personal watercraft; and any action on Connecticut Street depended upon what happened with the Mound House.

Community Development Director Fluegel reported that COP was on Council's Agenda for April 16th.

Mr. Kakatsch volunteered to attend the Council's April 16th meeting to represent the LPA.

Community Development Director Fluegel stated there would be a Work Session on the sign ordinance on May 21st.

Ms. Shamp noted that Council removed rights-of-way/residential connection and stormwater from the LPA list. She questioned the status of the International Property Code.

Community Development Director Fluegel stated it was a work in progress.

Ms. Shamp asked about the FEMA Community Rating System, EAR, and post-disaster recovery.

Community Development Director Fluegel reported they were all works in progress, and discussed how the Town was working to lower the rating.

Ms. Shamp stated today's Staff Report and presentation were well done.

Ms. Plummer asked if the case that was canceled last month would come back before the LPA in the future. Community Development Director Fluegel stated it would probably come back next month. Discussion was held concerning the LPA meeting schedule; and it was noted that the LPA usually targeted August as a month without meeting. Community Development Director Fluegel acknowledged the request, but pointed out that due to the number of upcoming applications there might be a month where they would have to meet twice.

X. ITEMS FOR NEXT MONTH'S AGENDA

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Mr. Kakatsch, seconded by Ms. Plummer to adjourn.

VOTE: Motion approved, 7-0.

Meeting adjourned at 12:50 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

- End of document.

PARKING SCHEDULE FOR SITE

AREA DESCRIPTION	SQ FT	PERCENTAGE
TOTAL SITE AREA	28,212 SQ FT	100%
BUILDING AREA	4,000 SQ FT	14%
OPEN SPACE	24,212 SQ FT	86%

USE	AREA	PARKING RATIO	SPACES REQ'D
RESTAURANT	4,000 S.F.	8 SPACES : 1,000 S.F.	32
OUTDOOR SEATING	1,859 S.F.	8 SPACES : 1,000 S.F.	15
TOTAL			47

TOTAL REQUIRED PARKING	47
HANDICAP SPACES REQUIRED	2
REGULAR PARKING REQUIRED	45
REGULAR PARKING SPACES PROVIDED	32
TOTAL H. C. PARKING SPACES PROVIDED (LDC-34-2020)	2
TOTAL PARKING SPACES PROVIDED (INCLUDING H.C.)	34



SITE DEVELOPMENT NOTES

- 1-Site area: 28,212 sq. ft. / 0.65 acres
- 2-Future land use-boulevard and mixed residential
- 3-Current zoning, cpd, cb, rm.
- 4-Proposed zoning cpd
- 5-Maximum proposed intensity is 4,000 sq. ft. of restaurant uses and 1,859 sq. ft. of outdoor seating/
- 6-Potable water to be provided by town of fort Myers beach.
- 7-Sanitary sewer to be provided by local county utilities.
- 8-Solid waste pickup to be provided by town of fort Myers beach.
- 9-Buffer yards to be provided in accordance with LDC section 10-416, unless subject to deviation request as shown on MCP and landscape plan.
- 10-Site located in firm zone ae.
- 11-Base flood elevation +13.00' NAVD 88.

SITE DATA

SITE AREA: 28,212 sq. ft.
 BUILDING SQUARE FOOTAGE: 4,000 sq. ft.
 OUTDOOR SEATING SQUARE FOOTAGE: 1,859 sq. ft.
 MAXIMUM BUILDING HEIGHT: 18 ft. (F.F.S. 59+)
 MINIMUM BUILDING SETBACKS:
 ESTERO BOULEVARD: 45 ft.
 FAIRWEATHER LANE: 239 ft.
 MANGO STREET: 110.5 ft.
 REAR: 2 ft.

SITE ADDRESS: 2301 ESTERO BOULEVARD
 FORT MYERS BEACH, FL.

△ SITE DEVIATION NOTES (B)

Exhibit D-1-F Schedule of Deviations & Justification

- 1-Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses about single family residential uses, to allow for an (8) foot high solid stockade fence and 15-foot Type "C" buffers without a wall, as indicated on the MCP and landscape plan.
- 2-Deviation from the requirements of LDC Section 10-416(d)(2) and LCD Table 10-8, which requires a 15-foot Type "D" buffer between parking areas and rights-of-way, to allow for a 5-foot type "D" buffer between parking areas and rights-of-way
- 3-Deviation from the requirement of LDC Section 34-704(a) which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building.
- 4-Deviation from the requirement of LDC Section 34-704(b)(1)a., which requires a minimum 10-foot street setback, to allow for a 2.39 street setback from Fairweather Lane to accommodate the existing building.
- 5-Deviation from the requirement of LDC Section 34-704(b)(1)b., which requires a minimum 20-foot rear setback, to allow for a two-foot rear setback to accommodate the existing building.
- 6-Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal facade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal facade to be 16 feet in length.
- 7-Deviation from the requirement of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fair-weather Lane.
- 8-Deviation from LDC Section 34-2020(d)(2)h., which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area, or 47 required spaces, to allow for a 30% reduction from the LDC requirement, for a total of 34 spaces.
- 9-Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.
- 10-Deviation from LDC Section 10-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96+/- feet of connection separation along Mango Street.
- 11-Deviation from LDC 10-289(d) which requires an 8 foot wide sidewalk along the Property's Estero Blvd. frontage to allow a 5'-0" sidewalk.

EXHIBIT (A)

LOCATION	BUFFER TYPE	# TREES (1)	# SHRUBS (1)	BUFFER WIDTH (2)
NORTH	C	110 LF./100 LF X 5 = 6 TREES	110 LF/100 LF X 18= 20 SHRUBS	15'
NORTHWEST	C	40 LF/100 LF X 5 = 2 TREES	40 LF/100 LF X 18= 7 SHRUBS	14'
SOUTH (ESTERO BLVD.)	D	218 LF/100 LF X 5 = 11 TREES	36" HEDGEROW	5'
EAST (MANGO ST.)	D	193 LF/100 LF X 5 = 10 TREES	36" HEDGEROW	5'
WEST (FAIRWEATHER LN)	NO BUFFER REQUIRED	N/A	36" HEDGEROW	5'

(1) PER 100 LINEAR FEET

(2) SEE DEVIATIONS

(3) AT LEAST 75% OF TREES AND 50% OF SHRUBS MUST BE NATIVE FLORIDA SPECIES.

③	3/13/12	DK	REVISED MONUMENT SIGN LOCATION
②	3/13/12	DK	REVISED PER ZONE SUBMITTAL COMMENTS
①	3/6/12	DK	REMOVE S. STAIRWAY & E. SWAL
REV#	DATE	BY	DESCRIPTION

EAGLE EQUITY CAPITAL LLC
MASTER CONCEPT PLAN
 FORT MYERS BEACH, FLORIDA

BARBON CONSULTING SERVICES					
FORT MYERS, FLORIDA					
239-433-5802					
SCALE	DWN. BY	DATE	APPROVED	DRAWING No.	REV#
AS SHOWN	D.K.	2/20/12	BH	11-301-03	C

Eagle Equity Capital CPD Amendment

Exhibit D-1-F Schedule of Deviations & Justifications

ORIGINAL

REVISED 03/28/2012

1. **Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14 to 15-foot Type "C" buffers without a wall, as indicated on the MCP and landscape plan.**

Justification: The deviation to provide an eight (8)-foot tall stockade fence along the rear of the existing building was previously approved per Resolution No. 06-30, and is required to screen for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. As of the date of this submittal, the fence has been constructed and effectively screens the adjacent single family use from the existing building as intended by the LDC. Therefore, the Applicant respectfully requests continuation of this deviation approval.

The 14- to 15-foot Type "C" buffer proposed where the parking area abut single family residential uses will also provide appropriate screening where no buffer currently exists. The proposed buffer yards will result in an enhancement to surrounding residential properties and will visually screen the proposed restaurant and parking uses as prescribed on the proposed MCP. Also, as discussed with Staff, provision of a wall along the property line may result in maintenance issues that can be avoided through the appropriate provision of vegetative screening, as proposed.

2. **Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15-foot Type "D" buffer between parking areas and rights-of-way, to allow for a 5-foot Type "D" buffer between parking areas and rights-of-way.**

Justification: Due to the compact, infill nature of the site, the Applicant respectfully requests reduced buffer widths along Mango Street and Estero Boulevard to screen the proposed parking area. In order to accommodate the requisite parking, stormwater management, and other upgraded site features, there is insufficient space to provide a 15-foot wide buffer where the parking area abuts public rights-of-way. The proposed 5-foot buffer will contain the requisite Type "D" plantings and will therefore meet the intent of the LDC for screening parking areas, while recognizing the regulatory relief needed to allow for compact, infill redevelopment.

3. **Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land

Development Code. This deviation from the LDC has been in effect for several decades and has not resulted in any negative impact to health, safety or welfare. Therefore, the Applicant respectfully requests continuation of this deviation approval.

- 4. Deviation from the requirement of LDC Section 34-704(b)(1)a., which requires a minimum 10-foot street setback, to allow for a 2.39 street setback from Fairweather Lane to accommodate the existing building.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. This deviation from the LDC has been in effect for several decades and has not resulted in any negative impact to health, safety or welfare. Therefore, the Applicant respectfully requests continuation of this deviation approval.

- 5. Deviation from the requirement of LDC Section 34-704(b)(1)b., which requires a minimum 20-foot rear setback, to allow for a two-foot a rear setback to accommodate the existing building.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. This deviation from the LDC has been in effect for several decades and has not resulted in any negative impact to health, safety or welfare. Therefore, the Applicant respectfully requests continuation of this deviation approval.

- 6. Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal façade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal façade to be 16 feet in length.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. The building has undergone a substantial renovation that dramatically improved the appearance of the building, which meets the overall intent of the LDC's commercial design standards.

- 7. Deviation from the requirement of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane.**

Justification: This deviation was previously approved per Resolution No. 06-30 and is required to allow for the existing, non-conforming building, which was constructed in 1961 prior to adoption of the Land Development Code. This deviation from the LDC has been in effect for several decades and has not resulted in any negative impact to health, safety or welfare. Therefore, the Applicant respectfully requests continuation of this deviation approval.

- 8. Deviation from LDC Section 34-2020(d)(2)h., which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 47 required spaces) to allow for a 30% reduction from the LDC requirement (for a total of 34 provided spaces).**

Justification: Due to the infill nature of the site, the Applicant is requesting a reduction to the number of parking spaces required to support the outdoor seating area. The required parking for indoor restaurant uses is provided in accordance with the Section 34-2020 of the LDC.

The subject property consists of a pedestrian-oriented restaurant use within walking distance of numerous hotels within the central business district of Fort Myers Beach. Moreover the property is owned by the owner of the Neptune Inn and intended as an ancillary restaurant to service hotel guests. Therefore, a significant number of patrons are expected to walk or bicycle to the property.

Moreover, the proposed CPD exponentially increases the parking and loading areas from one (1) handicap and one (1) standard parking space shown on the approved MCP, to thirty-two (32) standard parking spaces and two (2) handicap parking spaces, as shown on the proposed MCP. Upon approval of this petition the parking spaces will no longer back out onto public rights-of-way, thereby mitigating potential hazard to pedestrians and vehicles.

For these reasons, the Applicant respectfully submits that approval of this request will recognize the pedestrian nature of the project, and that the deviation will not negatively impact public, health, safety or welfare.

- 9. Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.**

Justification: The proposed crushed shell or limerock surface will complement the overall character of the Town of Fort Myers Beach, while ensuring public health, safety and welfare. The proposed impervious surface will also result in environmental benefits, including reduction of heat island effect due to higher reflectivity when compared to asphalt, and will help to filter and reduce runoff from the site. Moreover, the engineered MCP is designed to prevent the flow of sediment-laden runoff from the parking area via strategically located stormwater management features. Lastly, the handicap parking spaces will be paved to further ensure the safety of restaurant patrons.

- 10. Deviation from LDC Section 10-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96+/- feet of connection separation along Mango Street.**

Justification: The reduced connection separation along Mango Street is required to accommodate the parking area shown on the MCP. The two (2) points of connection to Mango Street will significantly enhance public safety for vehicles entering and exiting the site, as well as for pedestrians and bicyclists travelling along the Estero Boulevard frontage. Moreover, the reduced connection separation is minor in nature and represents only a 25% reduction from the required separation distance. Due to low traffic speeds along Mango Street, the minor nature of the request, and the enhanced safety provided via the proposed layout, the Applicant respectfully requests approval of this deviation.

11. Deviation from LDC Section 10-289(d) which requires an 8-foot wide sidewalk along the Property's Estero Boulevard frontage, to allow for a 5-foot wide sidewalk.

Justification: The Applicant is proposing to significantly improve the pedestrian environment within the property and along Estero Blvd., which adequately justifies the proposed deviation for a slightly reduced sidewalk width.

A 5-foot sidewalk is proposed along the Estero Blvd. frontage, where no sidewalk exists today. Additionally, the existing parking lot, which requires vehicles to back out directly onto Estero Blvd., will be relocated to the side of the building to restrict vehicular ingress/ingress to Mango Street. This will significantly improve bicycle and pedestrian safety along the roadway. Also, there is proposed sidewalk connection between the restaurant uses and the Estero Blvd. sidewalk, which will provide a safe pedestrian connection to the building, and mitigate the need to traverse the parking lot.

When these various design components are combined, the proposed CPD will have a dramatic positive impact upon the Estero Blvd. pedestrian environment, and will meet the intent of the LDC for the provision of pedestrian and bicycle facilities; thereby protecting public health, safety and welfare.