

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 06-30

WHEREAS, Joan M. DeLucas ("Applicant") previously requested to rezone 0.22+/- acres or approximately 9,739+/- square feet, from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow the conversion of an existing 4,000 square foot office building into two (2) restaurants; and

WHEREAS, the subject property is located at 2301 Estero Boulevard, Fort Myers Beach, in Section 19, Township 46 South, Range 24 East, in Lee County, Florida; and

WHEREAS, Applicant has indicated the subject property's current STRAP number is: 19-46-24-W3-0110D.0010, and the legal description of the subject property is attached hereto and incorporated herein by reference as Exhibit "B"; and

WHEREAS, a public hearing was properly noticed and held on April 11, 2006, before the Local Planning Agency (LPA), at which time the LPA recommended approval of the application; and

WHEREAS, a public hearing was properly noticed and duly held on May 8, 2006, before the Town Council, at which time the Town Council denied the applicant's request and subsequently denied the applicant's request for rehearing; and

WHEREAS, the applicant exercised her right to request a proceeding with a Special Magistrate pursuant to the Florida Land Use and Environmental Dispute Resolution Act ("FLUEDRA"), Chapter 70, Florida Statutes; and

WHEREAS, following the parties' participation in the FLUEDRA proceeding, a Consent Recommendation dated November 22, 2006 was presented to the Town Council at its regularly scheduled meeting on December 11, 2006; and

WHEREAS, the Town Council voted to approve the Consent Recommendation as modified by Town Council with the consent of applicant at said meeting, which modifications are memorialized in the Amended Consent Recommendation dated December 14, 2006 which is attached hereto as Exhibit "A" and the Master Concept Plan (MCP), entitled "Big John's Board Walk Eatery" stamped "Received November 14, 2006 by GM, last revised 11/13/06," which is attached hereto as Exhibit "C", except as modified by the conditions set forth in the Amended Consent Recommendation, both of which Exhibits are hereby incorporated by reference; and

WHEREAS, this Resolution is intended as a ministerial act only, to memorialize the decision reached by the Town Council at its meeting of December 11, 2006;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

SECTION 1. FINDINGS OF FACT AND CONCLUSIONS.

Based upon the recommendations of the LPA, the presentations by Applicant, staff, and other interested parties at the public hearing, and review of the application and the standards for planned development zoning approval, and the review of the Amended Consent Recommendations by the Special Magistrate pursuant to the FLUEDRA process engaged in by the Town and the applicant, the Town Council makes the following findings and reaches the following conclusions:

1. The requested rezoning, as conditioned pursuant to the attached Amended Consent Recommendation, complies with:
 - a. The Fort Myers Beach Comprehensive Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
 - d. the following additional requirements for planned development zoning requests: Comprehensive Plan Policy 4-C-3.
2. The proposed use or mix of uses is appropriate at the subject location.
3. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations.
4. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. As to the requested deviations, as conditioned pursuant to the attached Amended Consent Recommendation:
 - a. Each item enhances the achievement of the objectives of the planned development; and
 - b. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare will be preserved and promoted; and
 - c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
 - d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

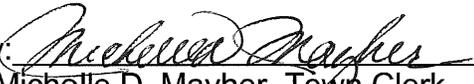
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon motion by Vice Mayor Massucco and second by Councilmember Meador and ,being put to a vote, the result was as follows:

Dennis Boback, Mayor	aye
Don Massucco, Vice Mayor	aye
Charles Meador, Jr.	aye
Garr Reynolds	nay
William Shenko, Jr.	aye

DULY PASSED AND ENACTED this 18th day of December, 2006.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Michelle D. Mayher, Town Clerk

By: 
Dennis C. Boback, Mayor

Approved as to form by:

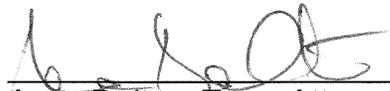

Anne Dalton, Town Attorney

EXHIBIT A

SPECIAL MAGISTRATE PROCEEDING PURSUANT TO THE FLORIDA LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION ACT

Joan M. DeLucas,

Petitioner/Applicant

vs.

Case # DCI 2005-00112

Big Johns Boardwalk Eatery

Town of Fort Myers Beach,

Respondent

AMENDED CONSENT RECOMMENDATION OF SPECIAL MAGISTRATE

This matter came before the undersigned on September 9, 2006, pursuant to a Request for Relief filed by Petitioner pursuant to FS 70.51 of the Florida Statutes. A Consent Recommendation of Special Magistrate was entered on or about the 22nd day of November, 2006, and that Consent Recommendation was considered by the Town Council of Fort Myers Beach at a Town Council Meeting held on the 11th day of December, 2006. The Town Council approved the Consent Recommendation with certain modifications, and the Parties have requested entry of an Amended Consent Recommendation which embodies those modifications.

Background

Petitioner seeks to convert certain property located at 2301 Estero Blvd., Fort Myers Beach, to use as 2 informal dining establishments. Although the restaurants would have separate and distinct kitchens and menus, they would operate under unified ownership, management, and control, and would both service the same market demographic.

Although redevelopment of the property as a restaurant would require both rezoning and several deviations from the existing Land Development Code, Petitioner believed that her proposed use of the property was consistent with the Town's intent for future development as outlined under the Town's Comprehensive Plan and Land Development Code such that the rezoning and deviation requests would be granted and expended approximately \$500,000 in renovating the subject property for restaurant purposes. On May 8, 2006, the Town Council denied Petitioner's request for rezoning and for the deviations which would have been sought had the rezoning been approved. Petitioner believes that said denial to be unreasonable, and unfairly burdens the owner's use of the property.

The Town of Fort Myers Beach, through its representatives at the hearing, suggested that although use of the property as a restaurant would not in and of itself be inappropriate, granting the requested deviations from the Land Development Code would not be in the best interest of the Town, or of the surrounding property owners in this mixed use commercial/residential area. Without minimizing or ignoring concerns relating to deviations requested that are not specifically enumerated herein, the primary concerns related to traffic and parking. The parking

available on the site would at best be only a fraction of that required under the Land Development Code. A commercial establishment which would bring substantial vehicular traffic to the site would create a burden on surrounding properties from overflow parking, and the vehicular traffic generated by those who cannot find a place to park would exacerbate the already existing traffic burden on Estero Boulevard. Although recognizing that any limitation on development of a parcel by its nature burdens the owner's use of property, the Town does not believe its refusal to allow use of the property for a restaurant under these circumstances is unreasonable, nor does it constitute a burden which is unfair to the property owner.

Framework for Resolution

As set forth in Objective 1-A of the Comprehensive Plan and the Policies adopted in accordance therewith, as a result of traffic concerns on Estero Boulevard, and in order to maintain a certain ambiance as more specifically set forth in the Comprehensive Plan, the Town seeks to direct commercial development in a manner which enhances the accessibility of the property itself to pedestrians, which improves general pedestrian flow along Estero Boulevard, and which minimizes adverse vehicular impact. In addition, the Town seeks to enhance surface water management and drainage where possible.

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 off site 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. It is further believed by the applicant and the representative of the Town of Ft. Myers Beach that the restrictions on parking and the conditions relating to buffering and hours of operation will better address the concerns raised in the initial staff report regarding neighborhood compatibility and commercial intrusion.

Consent to Entry of Amended Recommendations

Based upon the foregoing, the Parties have agreed to entry of this Amended Consent Recommendation. In consenting to entry of this Amended Recommendation, the Town of Fort Myers Beach does not admit that the actions of the Town which were the subject of this proceeding were unreasonable or unfairly burdened the owners' use of the property.

Recommendations

It is recommended that the Town of Fort Myers Beach adopt a Resolution which will embody, or substantially embody, the following terms and conditions.

A. CONDITIONS

1. The development of this project must be consistent with the two page Master Concept Plan (MCP) entitled "Big John's Board Walk Eatery," stamped "Received

November 14, 2006 BY GM, last revised 11/13/06, except as modified by the conditions below. This development must comply with all requirements of the Land Development Code (LDC) at the time of Local Development Order approval except as may be granted by deviations as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Residential – Open

Lodging – Limited

Office – Limited

– Offices, general or medical

– Personal services

Retail – Limited

– Restaurant (limited to two (2) with a total maximum area of 4000 square feet of indoor space with additional outdoor seating as indicated on the MCP)

– On-premises consumption of alcoholic beverages (limited to beer and wine served only in conjunction with meals) including approximately 1000 square feet of outdoor seating in conjunction with the proposed deck

Civic – Open

b. Planned Development Dimensional Regulations

Dimensional regulations must comply with LDC Section 34-704 except where otherwise granted by deviations as part of this planned development

Maximum building height – 18 feet above grade and one story

Maximum F.A.R. – 0.53

3. All uses in the schedule of uses other than the limited Restaurant and on-premises consumption of alcoholic beverages uses require administrative action in accordance with LDC Section 34-219 to assure the compliance of the property with this zoning approval. All Office and Retail uses in the Schedule of uses listed in Condition 2. are limited by LDC Sections 34-702 and 34-703. If the deck is not developed as proposed and the use of the existing building reverts completely back to offices then the currently existing parking area—as excavated—may return to service in the current configuration.

4. 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 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.

5. Outdoor entertainment on the subject property is prohibited.
6. Prior to issuance of the Certificate of Compliance (CC) or Certificate of Occupancy (CO) Applicant is required to procure off-site parking in accordance with The Town Land Development Code. Any changes to the planned development to accommodate this modification will be approved administratively if in accordance with LDC Section 34-219.
7. Putricible waste and other waste products of the property's use must be stored in roll-off containers inside a completely enclosed area and removed from the premises on a daily basis. If private provision of this service is not available prior to the issuance of the local development order, Applicant will contact the Town to make other arrangements for these services.
8. The use of the on-site parking spaces and loading area allowed by Deviations #1 and #2 is limited to 10 minute intervals for picking up take-out orders or for parking delivery vehicles in accordance with LDC Section 34-1987. All parking areas must be constructed with pervious pavement acceptable to the Town at time of local development order.
9. Any expansion of on-premises consumption of alcoholic beverages requires separate Town Council consideration and approval.
10. Prior to issuance of the required local development order for this project, a landscape plan prepared by a professional landscape architect satisfying all conditions of this Resolution must be submitted to the Town for administrative review and approval as part of the local development order. This plan must include potted plants for the proposed deck area to offset the reductions allowed by Deviation #1 and appropriate plants for the 2-foot wide landscape buffer allowed by Deviation #2. The fence and reduced landscape buffer allowed by Deviation #2 must otherwise comply with all provisions of the LDC regarding fences and landscape buffers.
11. In conjunction with the review of the local development order, the Town will identify the best way to delineate the pedestrian sidewalk along Estero Boulevard and the owner must cooperate with the Town to establish this determination to facilitate pedestrian traffic.
12. All outside lighting must comply with the requirements of the LDC. Prior to the issuance of any Certificate of Compliance (CC) or Certificate of Occupancy (CO) for the subject property, any outside lighting to the rear of the subject property must be mounted low enough to be contained within the required 8-foot high stockade fence.
13. Prior to the issuance of any CC or CO for the subject property, a Type D landscaped buffer a minimum of 15 feet wide satisfying or exceeding the standards of LDC Section 10-416(d)(3) and LDC Table 10-9 buffers must be planted on the Estero side of the proposed deck area indicated on the MCP. Additional

landscaped areas five (5) feet wide on the northerly side of the deck and 10 feet wide on the southerly side of the deck with a planting plan acceptable to the Town must be included on the landscape plan referenced in condition 10 must be provided. This landscaping is required to address Deviation #1.

14. Prior to issuance of any CC or CO, the area between the existing building and Estero Boulevard from the southerly side lot line to the right-of-way of Fairweather Lane must be excavated to remove the asphalt and reduce the elevation of this portion of the site below that of the adjacent pavement for Estero Boulevard and Fairweather Lane to provide shallow water exfiltration.
15. Prior to issuance of any CC or CO for the project an accessible deck meeting all the requirements of the LDC must be constructed in the Deck Area indicated on the MCP.
16. A non-advertising mural must be painted and maintained on the 16-foot length of blank wall on the principal façade allowed by Deviation #8.
17. All exhaust vents for the restaurants will be mounted on the roof, screened from view on all sides and directed toward Estero Boulevard.
18. 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.
19. Approval of this zoning request does not give Applicant an undeniable right to receive local development order approval. Future development order approval must satisfy the requirements of the Fort Myers Beach Comprehensive Plan.

B. APPROVED DEVIATIONS

1. Deviation #1 from the requirements of LDC Sections 10-415(f) and 10-416(c) for open space landscaping standards to allow the alternative shallow water exfiltration and alternative buffers and open space as indicated on the MCP, as conditioned.
2. Deviation #2 from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8 for a Type C / F buffer to allow an eight-(8)-foot high solid stockade fence and two-(2)-foot wide landscape buffer on the rear lot line, as conditioned.
3. Deviation #3 from the requirement of LDC Section 10-416(d)(2) and LDC Table 10-8 for a Type D buffer between parking and rights-of-way to allow the alternative shallow water exfiltration and alternative buffers, as conditioned.
4. Deviation #4 from the requirement of LDC Section 34-704(a) that a building be built at five (5) to ten (10) feet from Estero Boulevard to allow a front setback of

- 46 feet for the existing building to allow the alternative shallow water exfiltration and alternative buffers, as conditioned.
5. Deviation #5 from the requirement of LDC Section 34-704(b)(1)a. for a minimum street setback of 10 feet to allow a street setback of 2.39 feet from Fairweather Lane for the existing.
 6. Deviation #6 from the requirement of LDC Section 34-704(b)(1)b. for a minimum rear setback of 20 feet to allow a rear setback of two (2) feet for the existing building .
 7. Deviation #7 from the requirement of LDC Section 34-704(b)(1)c. for a minimum side setback of five (5) feet to allow a side setback of 0.64 feet on the south side for the existing building.
 8. Deviation #8 from LDC Section 34-995(a)(3), that 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 facade of the existing building to be 16 feet in length, as conditioned.
 9. Deviation #9 from the requirement of LDC Section 34-995(d) that the distance of a corner building not be more than 20 feet from the intersection of right-of-way lines to allow for a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane to the existing building to allow the alternative shallow water exfiltration and alternative buffers, as conditioned.
 10. Deviation #10 from LDC Section 34-1986(c)(4) that prohibits off-street loading areas from being located between the principal building and a street right-of-way to allow the loading area indicated on the MCP and the alternative shallow water exfiltration and alternative buffers, as conditioned.
 11. Deviation #11 from the requirement of LDC Section 34-2015(6) that all parking lots be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion, to allow:
 - a. back-out parking for one (1) disabled parking space and one (1) standard parking space--limited to use as pick-up and delivery to serve the proposed pedestrian-oriented restaurants in the existing building—designed to back out onto Fairweather Lane as indicated on the MCP.
 - b. a 15-foot wide by 26-foot deep loading area to serve the proposed pedestrian-oriented restaurants in the existing building—designed to back out onto Estero Boulevard—as indicated on the MCP.
 12. Deviation #12 from LDC Section 34-2020(b)((2) that requires additional parking to be provided in accordance with the standards of LDC Section 34-2020 when the use of a building is changed to a different use that is required to have more parking than exists to allow the pedestrian-oriented configuration indicated on the MCP

and the alternative shallow water exfiltration and alternative buffers, as conditioned.

13. Deviation #13 from the requirement of LDC Section 34-2020(d)(2)h., for 8 parking spaces per 1000 square feet of total floor area plus any outdoor seating for restaurants, to allow for the provision of no on-site customer parking, limited service parking for pick-up / delivery, and limited off-street loading as indicated on the MCP to supply the proposed pedestrian-oriented restaurants in the existing building, and allow for the alternative shallow water exfiltration and alternative buffers, as conditioned.

Done this 14th day of December, 2006



SIMON M. HARRISON
Special Magistrate
P. O. Box 07372
Fort Myers, FL 33919
(239-433-4505)
Fl Bar No. 262072

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that duplicate originals of the foregoing have been filed with the parties by service by United States Mail to Anne Dalton, Esq., 2044 Bayside Parkway, Fort Myers, FL 33901, and Matthew D. Uhle, Esq., 1625 Hendry Street, Fort Myers, FL 33902, and a true and correct copy of the foregoing has been furnished by United States Mail to the Florida Department of Legal Affairs, The Capitol PL-01, Tallahassee, FL 32399-1050, this 14th day of December, 2006.



Simon M. Harrison

Legal Description
EXHIBIT 7-2

Lot 1, Block D, and Lot 2, Block D of the Beach Estates Subdivision as recorded in Plat Book 6, page 68, of the Public Records of Lee County, Florida, located in Section 19, Township 46 North, Range 24 East, being more particularly described as follows:
Beginning at the concrete monument marking the northeast corner of Lot 2, Block D of said Beach Estates Subdivision,

Thence North 68°01'56" West, 100.00 feet along the northerly line of said Lots 1 and 2 of Block D to the northwest corner of said Lot 1 and the easterly right of way of Fairweather Lane, being 18 feet wide;

Thence, South 00°00'00" West, 100.97 feet along said easterly right of way to the northerly right of way of County Road 865 (Estero Boulevard), being 50 feet wide,

Thence, South 68°30'00" East, 99.68 feet along said northerly right of way to the east line of said Lot 2;

Thence, North 00°00'00" West, 100.10 feet along the east line of said Lot 2 to the Point of Beginning.

Parcel contains 9323.60 square feet, or 0.21 acres, more or less.

Applicant's Legal Checked

by Lgm 12/15/2005

DCI 2005-00112

RECEIVED

NOV 29 2005

COMMUNITY DEVELOPMENT

EXHIBIT B

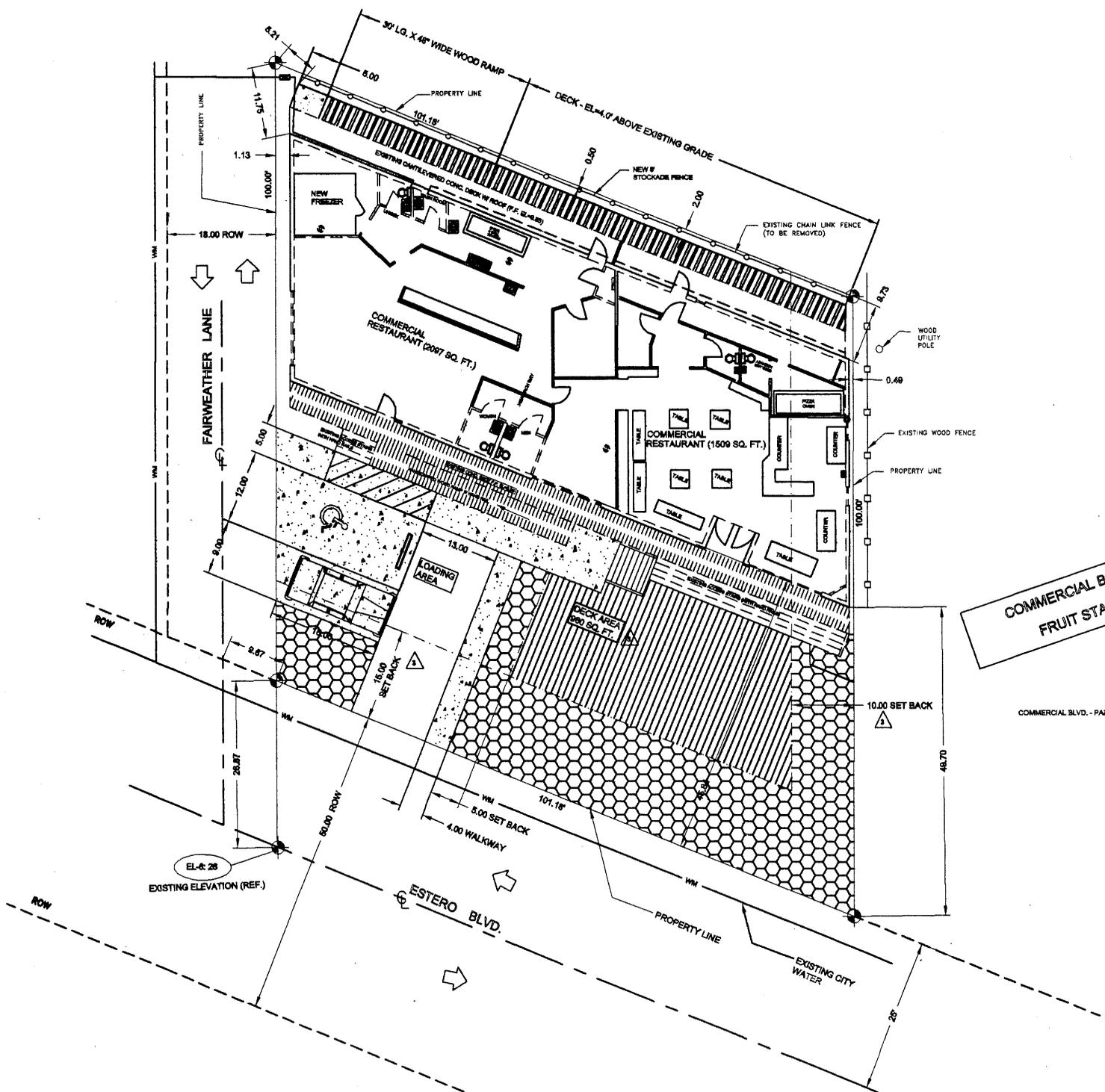


MASTER CONCEPT PLAN
 SITE ADDRESS: 2301 ESTERO BOULEVARD
 FORT MYERS, FLORIDA 33931

CONCEPT PLAN #1
 SITE DATA:

HEIGHT OF BUILDING = MAXIMUM 18 FT.
 No. STORIES = ONE
 BUILDING AREA = 3607 SQ. FT.
 LOT AREA = 9739 SQ. FT.

 = PROPOSED LANDSCAPED AREAS



COMMERCIAL BOULEVARD
 FRUIT STAND

COMMERCIAL BLVD. - PARKING LOT

RECEIVED
 NOV 14 2006

BY: *gm*

EXHIBIT "C" PAGE 2 OF 2

REV #	DATE	BY	DESCRIPTION
3	11/13/08	DK	REV. PROP. SET BACK, N, W & S.
2	10/2/08	DK	REV. PARKING, CHG. DECK AREA
1	9/1/08	DK	RELOCATED HC PARKING/ENLARGE DECK

BIG JOHN'S BOARD WALK EATERY
 CONCEPT PLAN-1
 FORT MYERS BEACH, FLORIDA

 BARBON CONSULTING SERVICES FORT MYERS, FLORIDA PHONE: 239 433 9902											
SCALE	AS SHOWN	DWN BY	D.K.	DATE	9/6/08	APPROVED	B.H.	DRAWING No.	05-201-08	REV. #	3