

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 08-08

WHEREAS, McHarris Planning and Design ("Applicant") has requested to rezone 2.15+/- acres from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow phased redevelopment of the subject property with a mixed-use complex to include a variety of commercial and residential uses (total floor area 85,000 square feet); and

WHEREAS, the subject property is located at 2545 and 2555 Estero Boulevard, Fort Myers Beach, Florida; and

WHEREAS, the Applicant has indicated the property's current STRAP numbers are: 19-46-24-W3-00458.000 and 19-46-24-W3-00458.0010, with the legal description attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, a public hearing was advertised and held before the Local Planning Agency (LPA) on November 13, 2007, at which time the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, the request of Applicant and the testimony of all interested persons and recommended that the Town Council grant approval of applicant's request, with conditions and deviations as outlined with specificity in LPA Resolution Number 2007-24; and

WHEREAS, a public hearing was advertised and held before the Town Council on February 11, 2008, at which time the Town Council continued the hearing to March 10, 2008, with the consent of Applicant and the Town Council further continued the hearing on March 10, 2008 to April 21, 2008 with the consent of Applicant; and

WHEREAS, on April 21, 2008, at the continued public hearing, the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution, the request of Applicant, the documents in the file, and the testimony of all interested persons.

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

The Town Council **APPROVES** the Applicant's request to rezone from CB to CPD, subject to **fifteen (15) conditions** and **five (5) deviations** as set forth with specificity below.

A. CONDITIONS

1. Development must be consistent with the six-page master concept plan (MCP) entitled "The Topps Remodel" for case FMBDCI2007-00003, stamped received March 18, 2009, attached hereto and incorporated herein by reference as Exhibit "B", except as specifically modified by conditions or deviations herein. If changes to the MCP are subsequently pursued, appropriate approvals will be required.

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

Schedule of Uses

Residential

Principal:

- Dwelling unit, multifamily
- Dwelling unit, live/work
- Timeshare units

Accessory:

- Residential accessory uses

No more than **13 units** of residential density in any combination of uses.

Lodging

Principal:

- Rental of any permitted dwelling unit to a single family for periods of one week or longer (subject to rules in Land Development Code (LDC) Sections 34-2391 through 34-2410)
- Hotel/Motel (guest units must comply with LDC Chapter 34, Article IV, Division 19).

Accessory:

- Subordinate commercial uses

Office

Principal

- Health care facility
- Offices, general or medical
- Personal services
- Wholesale establishment (by separate Special Exception only)

Accessory

- Home occupation (no outside help)
- Administrative office

Retail

Principal

- Parking lot, shared permanent (by separate Special Exception only)
- Laundromat
- Restaurant
- Retail store, small
- Bar or cocktail lounge (existing only)

Accessory

- Commercial accessory uses
- ATM
- On-premises consumption of alcoholic beverages (by separate Administrative Approval or separate Special Exception only)

Marine

Principal

- NONE

Accessory

- Dock (for sole use by occupants of principal use)
- Dock (for use by water taxi or water shuttle)

Civic

Principal

- Recreation facility, private off-site (by separate Special Exception only)

Recreation facility, public
Day care center, adult
Day care center, child
Transit terminal (by separate Special Exception only)
Cultural facility (by separate Special Exception only)
Theater (by separate Special Exception only)

Accessory:

Dwelling unit, caretaker (only within limit of **13 units** of residential density)
Essential Services
Essential Service Equipment

Site Development Regulations

Minimum Lot width: 201± feet
Minimum Lot depth: 495± feet
Minimum Lot area: 93,000± square feet
Maximum Floor Area Ratio: 1.0
Maximum Building Height (feet): **30** feet above base flood elevation
Maximum Building Height (stories): **3** (including enclosed or unenclosed space below base flood elevation as one story)

Minimum setbacks:

Street (Estero Boulevard): 5 feet
Street (Gulf Beach Road): 5 feet
Street (Tropical Shores Way): 10 feet
Rear (adjoining RC zoning): 20 feet
Water body: 5 feet (only for accessory structures not to be enclosed except by open-mesh screening above a height of 48 inches measured from grade level)
20 feet (for principal structures and for accessory structures not meeting the above limitation)

3. Office and retail uses listed in the schedule of uses above shall be located within buildings and limited in area as follows:

Building A: 3,992 square feet retail or office
Building B: 5,812 square feet retail or office
Building C: 18,000 square feet retail or office (first floor)
22,500 square feet office (second floor)

The dedication to the Town of the 5 feet wide easement along Estero Boulevard for public purposes will not reduce the cumulative allowable square footage.

4. The existing bar/cocktail lounge has a non-conforming 2COP license for on-premises consumption of only beer and wine (2COP license #BEV4600659) pursuant to Lee County BOCC resolution Z-78-12. If this use or the license allowing it is abandoned for a period of nine (9) months (279 calendar days) or more, it may not be re-established except in accordance with the LDC. Any new, expanded, or re-established on-premises consumption of alcoholic beverages may be allowed only in accordance with the LDC.

5. Development and operation of hotel/motel units must be in compliance with LDC Chapter 34, Article IV, Division 19. Subject to the approval of Deviation # 2, as set forth below, the subject property must not exceed the maximum residential density allowed

under the Fort Myers Beach Comprehensive Plan (Comp Plan) through any combination, division, reconfiguration, or conversion of dwelling units, guest units, lock-off accommodations, or other living units.

6. Approval of this rezoning does not authorize any activity in violation of the easement for canal recorded in Miscellaneous Book 54, Pages 39-40 of the Public Records of Lee County, Florida, or any other public or private easement.

7. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.

8. The Town Council has the discretion to approve or not approve the requested parking spaces in the right-of-way (ROW) of Tropical Shores Way. Such approval, if any, will be via separate agreement with the Town. If approved, the ROW parking spaces must be (a) constructed by the owner of the subject property not later than Phase III of the development (or its equivalent, if the Phases are subsequently modified with Town approval); (b) fully maintained in perpetuity at all times by the property owner; (c) subject to the Town's right of rescission, in full or in part, and/or the Town's ability to charge a fee for this usage at any time for any reason; and (d) available to the Town without fee or restriction for usage by the general public.

9. The development must comply with LDC Section 14-76 requirements for sea turtle conservation applicable to new development.

10. The existing parking layout does not conform to the requirements of LDC Chapter 34, Article IV, Division 26. Approval of the requested rezoning will not be construed as a variance from LDC Chapter 34, Article IV, Division 26 applicable to the existing conditions, Deviation #3 and sheet "E" of the Master Concept Plan notwithstanding. Deviation #3 shall apply to redevelopment of the subject property only.

11. Deviation #4 will not be construed as a variance from the floodplain regulations contained in LDC Chapter 6, Article IV. All development of the subject property must comply with the requirements of LDC Chapter 6, Article IV in effect at the start of construction of improvements both for new construction and for substantial improvements.

12. To provide for future upgrades to infrastructure serving the subject property and to mitigate the impacts of the project on the existing infrastructure, prior to development order approval the property owners must dedicate as public right-of-way a 5-foot-wide strip of land adjoining Estero Boulevard from Gulf Beach Road to Tropical Shores Way. Dedication of this portion of the subject property to the public will not reduce the calculations of the density, intensity or other property development regulations granted herein except that the project must meet the minimum street setback from the property line.

13. All paved spaces within the development must be porous pavement to the greatest extent possible. Substantial compliance with this condition will be determined by the Town at the time of floodplain development review.

14. Developer agrees to provide a trolley pull-off and appropriate shelter acceptable to Town at the time of floodplain development review.

15. Developer agrees to pursue standards for Leadership in Energy and Environmental Design (LEED) to the greatest extent possible for this development.

B. DEVIATIONS

1. Deviation #1 requests a reduction in the connection separation required by LDC Section 10-286 from 250 feet to 99 feet and 103 feet for a single connection to Estero Boulevard; and from 125 feet to 0 feet for multiple garage access points on Gulf Beach Road. The Town Council **APPROVES** Deviation #1.

2. Deviation #2 from LDC Section 34-632(1), which requires computed density to be rounded down to the next whole number, would allow a computed density of 12.918 to be rounded up to 13 dwelling units. The Town Council **APPROVES** Deviation #2.

3. Deviation #3 requests a reduction in the parking required by LDC Section 34-2020 from 107 spaces to 98 spaces for Phase I, and from 116 spaces to 98 spaces for Phase II-A. Phase II-B and Phase III (buildout) will exceed the required parking by 23 spaces and 30 spaces, respectively. The Town Council **APPROVES** Deviation #3.

4. Deviation #4, from LDC Sections 34-953 and 34-705(b), requests an increase in maximum building height to allow three (3) stories including dry-floodproofed commercial space below base flood elevation, rather than two (2) stories including enclosed space below the base flood elevation but not including unenclosed space below the base flood elevation. The Town Council **APPROVES** Deviation #4.

5. Deviation #5 from LDC Sections 34-953 and 34-705(a), would allow a reduction in the required 50% building frontage to allow building placement as shown on the master concept plan. The Town Council **APPROVES** Deviation #5.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for planned development zoning approval, the Town Council makes the following findings and reach the following conclusions:

1. The requested rezoning, as conditioned **DOES** comply 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 Policies 1-A-3, 4-B-5 regarding the Boulevard Future Land Use Map category and Policy 4-C-3 regarding new and expanded commercial uses.
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 deviations #1,2, 3, 4 and 5, as conditioned:
 - a. Each item **DOES** enhance 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 **DOES** operate 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 Town Council upon a motion by Vice Mayor Acken and seconded by Councilmember Raymond and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor aye
 Tom Babcock nay
 Bob Raymond aye

Herb Acken, Vice Mayor aye
 Jo List aye

DULY PASSED AND ADOPTED THIS 21ST DAY OF APRIL, 2008, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

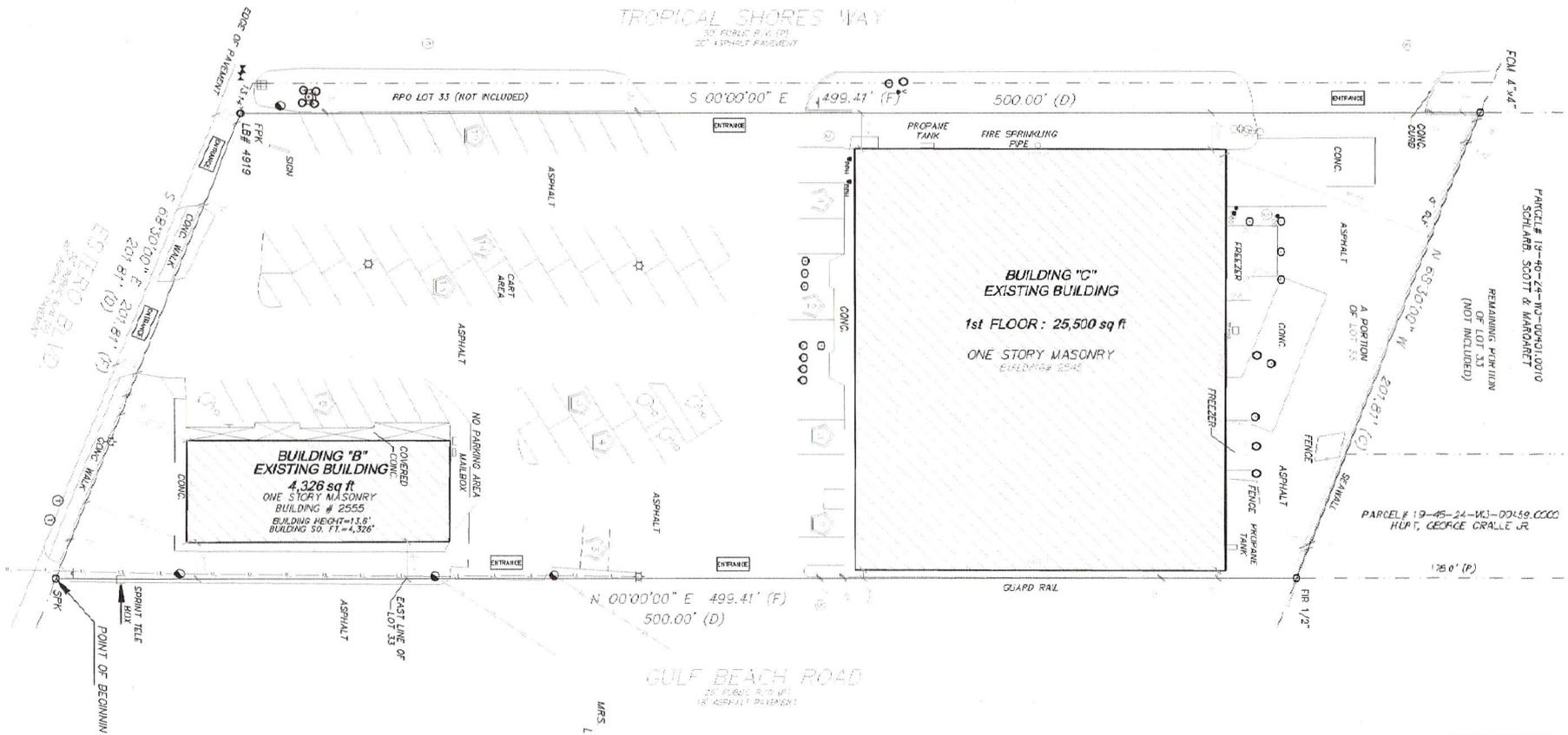
By: Larry Kiker
 Larry Kiker, Mayor

ATTEST:
 By: Michelle D. Mayher
 Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: Anne Dalton
 Anne Dalton, Esquire, Town Attorney

EXISTING TODAY	
EXISTING PARKING SPACES	: 68
REQUIRED PARKING	: 90
1st FLOOR	
A:	N/A
B:	4,326
C:	25,500
TOTAL:	29,826 sq ft
DEFICIENT 22 PARKING SPACES	



FUBDCB7/003
Revised March 11, 2019

EXISTING SITE PLAN

SCALE: 1:20

MCHARRIS
PLANNING & DESIGN
1001 W. PALM BEACH BLVD. SUITE 100
PALM BEACH, FL 33480
TEL: 561.832.1111
WWW.MCHARRIS-PA.COM

EXISTING PARKING CONDITIONS

NO.	TYPE	REMARKS	DATE
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
51			
52			
53			
54			
55			
56			
57			
58			
59			
60			
61			
62			
63			
64			
65			
66			
67			
68			
69			
70			
71			
72			
73			
74			
75			
76			
77			
78			
79			
80			
81			
82			
83			
84			
85			
86			
87			
88			
89			
90			

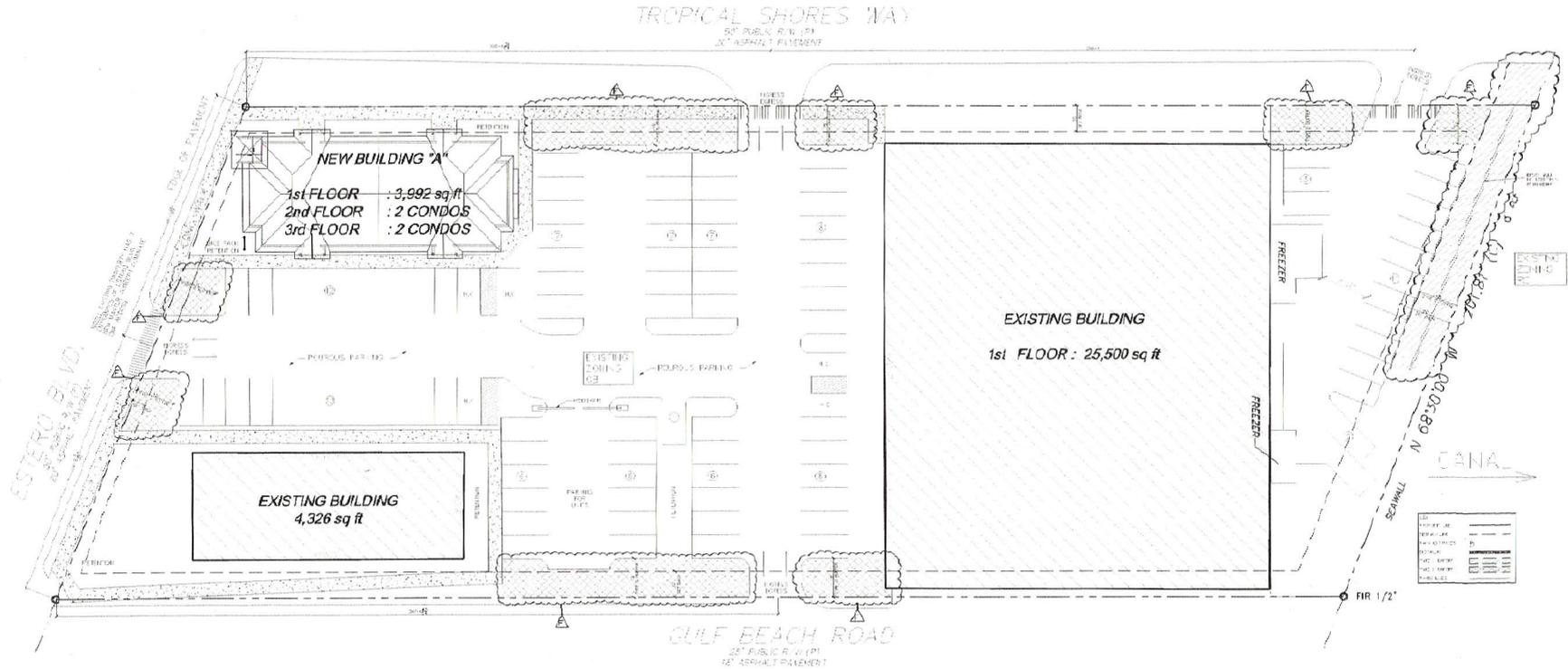
THE TOPPS REMODEL
3616 BOYER BLVD
FORT MYERS BEACH, FL 33931

Project: _____
 Location: _____
 Title: _____
 Date: _____
 Scale: _____

E

PHASE I	
PARKING SPACES* :	98
REQUIRED** :	107
RETAIL A :	3,992 sq ft
B :	4,326
C :	25,500
TOTAL :	33,818 sq ft
2nd FLOOR A :	2 CONDOS
B :	N/A
C :	N/A
3rd FLOOR A :	2 CONDOS
B :	N/A
C :	N/A
* INCLUDES 1 BIKE RACK	
** INCREASED BY 30	

PHASE I DESCRIPTION
1_ NEW PARKING AT FRONT & REAR
2_ ELIMINATION OF ONE ENTRANCE ALONG ESTERO BLVD AND REUSED ENTRANCES AT GULF BEACH ROAD & TROPICAL SHORES WAY
3_ NEW CONSTRUCTION OF BUILDING "A"
4_ LANDSCAPE BUFFER AT REAR
DEFICIENT 9 PARKING SPACES



MCHARRIS
Professional Engineer
License No. 12000
1000 N. GULF BEACH ROAD
SUITE 100
FORT MYERS, FL 33901
TEL: 888-288-2888
FAX: 888-288-2889
WWW.MCHARRIS.COM

**PHASE I
PARKING & NEW CONSTRUCTION**

No.	Date	Revised	By	Check	Scale	Notes
1						
2						
3						
4						
5						

THE TOPPS MEMORIAL
5515 GOLF COURSE BLVD
FORT MYERS BEACH, FL 33931

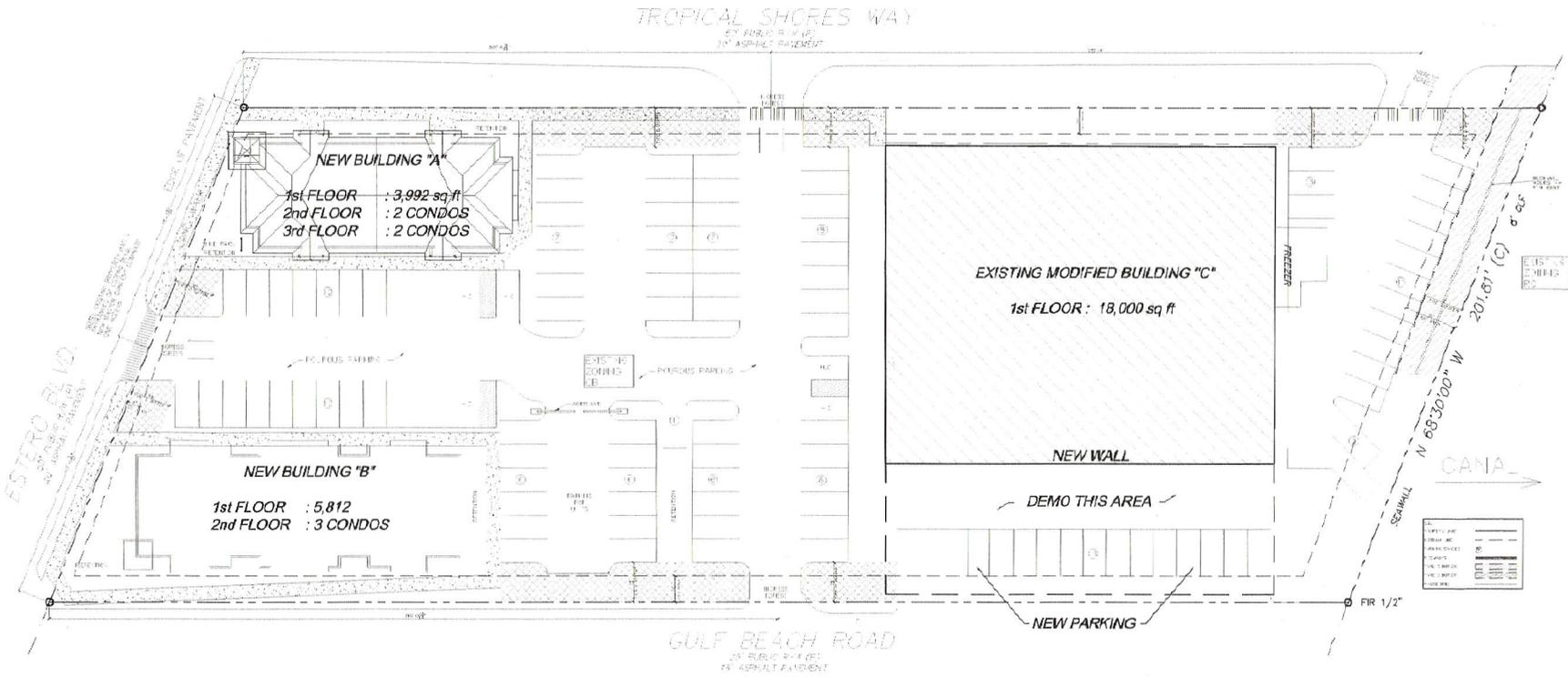
Drawn: []
Checked: []
Title: ARCHITECT
Project: []
Sheet: []
Scale: []

DATE: 03/11/2013
TIME: 10:00 AM

PHASE I SITE PLAN
SCALE: 1/20

PHASE II B	
PARKING SPACES PROVIDED*	:114
PARKING SPACES REQUIRED	: 96
RETAIL	
A :	3,992 sq ft
B :	5,812
C :	18,000
TOTAL :	27,804 sq ft
2nd FLOOR	
A :	2 CONDOS
B :	3 CONDOS
C :	N/A
3rd FLOOR	
A :	2 CONDOS
B :	N/A
C :	N/A
*INCLUDED 1 BIKE RACK	

PHASE II-B DESCRIPTION	
1_	DEMOLITION OF +/- 6500 sq ft OF EXISTING BUILDING "C"
2_	ADDITION OF 16 PARKING SPACES ALONG GULF BEACH ROAD
18 EXTRA SPACES	



THE DODD-GODS
Residential & HOI

PHASE II-B SITE PLAN
SCALE: 1:20

McHARRIS
ARCHITECTURAL FIRM
1000 W. GULF BEACH ROAD, SUITE 100
GULF BEACH, FL 32163
TEL: 321.833.1111
WWW.MCHARRISARCHITECTS.COM

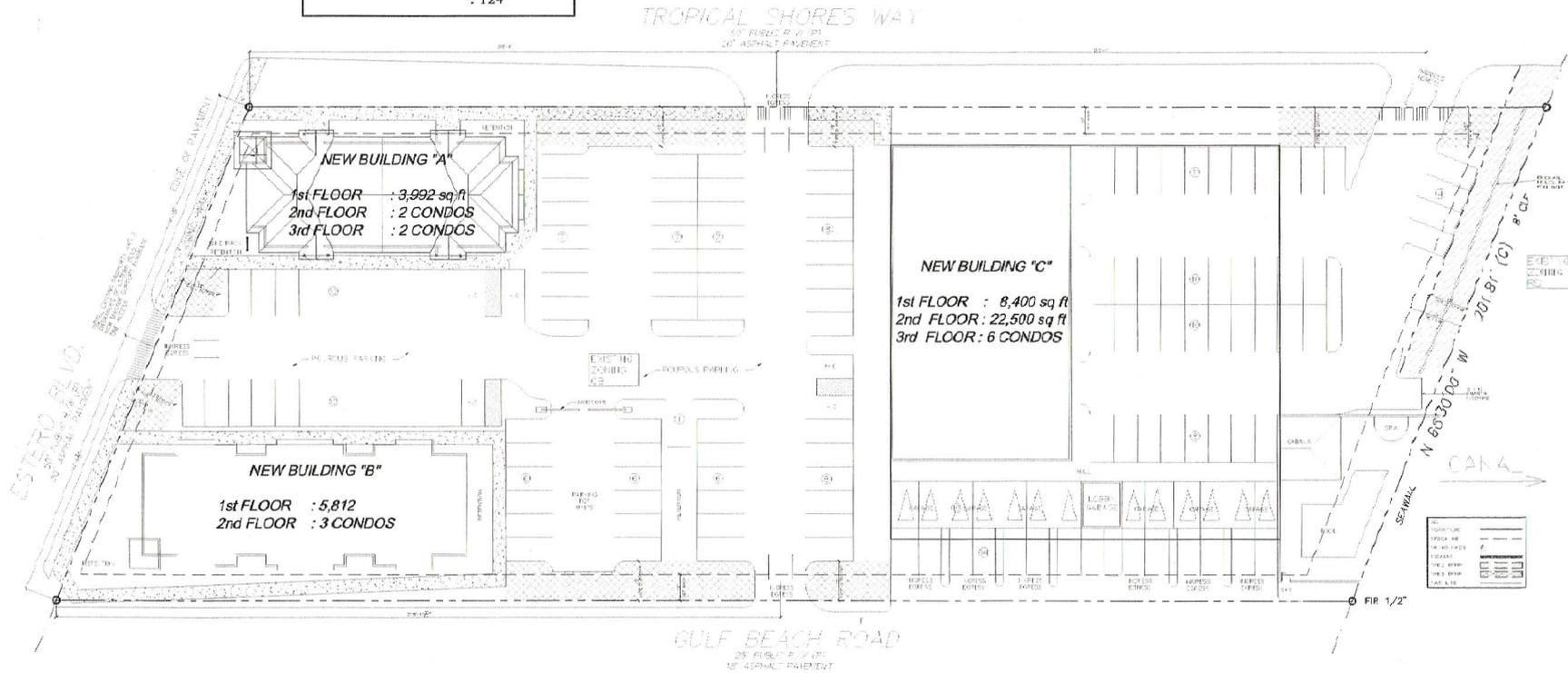
THE TOPPS REMODEL
32416 ESTERO BLVD
GULF BEACH, FL 32163

1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
26	27	28	29	30
31	32	33	34	35
36	37	38	39	40
41	42	43	44	45
46	47	48	49	50
51	52	53	54	55
56	57	58	59	60
61	62	63	64	65
66	67	68	69	70
71	72	73	74	75
76	77	78	79	80
81	82	83	84	85
86	87	88	89	90
91	92	93	94	95
96	97	98	99	100

DATE: 03-27-2018
SCALE: AS SHOWN
PROJECT: THE TOPPS REMODEL
SHEET: P-II-B

PHASE III	
PARKING SPACES PROVIDED	: 150
PARKING SPACES REQUIRED	: 120
1st FLOOR	
A :	3,992 sq ft
B :	5,812
C :	8,400
TOTAL :	18,204 sq ft
2nd FLOOR	
A :	2 CONDOS
B :	3 CONDOS
C :	22,500 OFFICE
3rd FLOOR	
A :	2 CONDOS
B :	N/A
C :	6 CONDOS
RETAIL	19,412 : 58
OFFICE	22,500 : 49
13 RESIDENT	: 20
	: 124

PHASE III DESCRIPTION
1_ DEMOLITION OF EXISTING BUILDING "C"
2_ CONSTRUCTION OF NEW 3 STORY BUILDING WITH PARKING UNDER BUILDING
3_ CONSTRUCTION POOL & CABANA BLDG
29 EXTRA SPACES + BIKE RACK = 30



FV8 LC201-001
 Revised March 18, 2009

PHASE III SITE PLAN

SCALE: 1:20

MCHARRIS
 Planners & Designers
 2405 ESTERO BLVD
 PORT JEFFERSON BEACH, FL 33081
 PHONE: 305-984-9800
 FAX: 305-984-9801
 WWW.MCHARRIS.COM

THE TOPPS
 REMODEL
 2405 ESTERO BLVD
 PORT JEFFERSON BEACH, FL 33081

Drawn By: JH
 Check By: JH
 Title: S 10202
 Date: 07/21/08
 Plot No: P-III

Exhibit A
FMBDCI2007-00003

A tract or parcel of land located in Lot 33, TP Hills Subdivision, as recorded in Plat Book 3, Page 84 of the Public Records of Lee County, being more particularly described as follows:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 33; THENCE N. 00°00'00" E. FOR 499.41 FEET; THENCE N. 68°30'00" W. FOR 201.81 FEET TO THE EAST LINE OF THAT CERTAIN RIGHT-OF-WAY DEDICATED IN DEED BOOK 236, PAGE 158 OF SAID PUBLIC RECORDS; THENCE S. 00°00'00" E. ON SAID RIGHT-OF-WAY LINE FOR 499.41 FEET TO THE NORTHEASTERLY LINE OF ESTERO BOULEVARD; THENCE S. 68°30'00" E. ON THE NORTHEASTERLY LINE OF ESTERO BOULEVARD FOR 201.81 FEET TO THE POINT OF BEGINNING.

Description based on ALTA Land Title Survey by Milton R. Gill, LS 5455, dated 7/6/2007 (Job #06009507).