

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 10-06  
*BAYSIDE PARCELS*

WHEREAS, JABO, LLC, a foreign corporation registered in the State of Florida, (“Applicant”) has requested the Town Council amend the Commercial Planned Development (CPD) zoning districts for Bayside CPD to approve a revised master concept plan (MCP) and to make certain changes including the addition of certain accessory uses to the MCP; and

WHEREAS, the subject property is located at 171-191 Estero Boulevard, 251-281 Estero Boulevard, 275 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, Applicant has indicated the property’s current STRAP numbers are 24-46-23-W1-00700.0340, 24-46-23-W1-00700.0320, and 24-46-23-W1-00700.0290, with the legal description set forth on **Exhibit “A”** which is attached hereto and hereby incorporated by reference; and

WHEREAS, the changes requested through this application include the following forms of additional development and modifications to previously approved development on the subject property:

1. Replace tennis courts on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, with an accessory parking lot as shown on proposed MCP.
2. Allow existing boat ramp on Bayside parcel to remain, with pedestrian walkway rerouted, as shown on proposed MCP.
- ~~3. Allow for dedication of 5 feet of right of way on either side of Estero Boulevard without detriment to existing development rights or impact upon existing buffering, open space, and other similar development requirements upon the subject property.~~
- ~~4. Remove prior condition restricting use of restaurants, personal services, and other commercial amenities within the resort to “guests of the Pink Shell Resort only.”~~
- ~~5. Remove prior condition limiting external advertisement of restaurants, personal services, and other commercial amenities.~~
- ~~6. Approve deviation to allow resort sign package providing identification and directional signage for the unified Pink Shell Resort. The package provided by the applicant includes signage for establishments not located on the subject property.~~
7. Add a trash compactor to the MCP on Lots 38 and 39, Block D, Island Shores Club Section Subdivision (adjacent to Bowditch Point Regional Park).
8. Add 8 valet parking spaces at the northwesterly end of the parking lot on the Bayside parcel, and 12 valet parking spaces at the southwesterly end of the parking lot on the Bayside parcel.
9. Add entrance gates at the parking lot entrances as shown on the MCP. Some entrance gates shown on the MCP are on parcels not included within the subject property.

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 24, 2009, at which time it was continued to April 28, 2009, May 12, 2009, and June 9, 2009, at which point the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, and the testimony of all interested persons and made the recommendations contained in LPA Resolution 2009-13; and

WHEREAS, on September 25, 2009, the applicant filed an amended application withdrawing various requests which were previously considered by the LPA and which resulted in Town staff preparing an amended staff report for consideration by Town Council; and

WHEREAS, a public hearing was legally advertised and held before the Town Council on October 16, 2009, at which time it was continued to December 7, 2009, December 21, 2009, and January 19, 2010, at which point the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution and testimony of the LPA representative, the request and amended request of Applicant, the documents in the file, and the testimony of all interested persons. The hearing of January 19, 2010 concluded on January 20, 2010.

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

The Town Council **APPROVES** Applicant's amended request to amend the CPD zoning district, subject to **APPROVAL of nine (9) conditions**. The Town Council **APPROVES Deviation #2 with modification**. All approvals and denials are set forth with specificity below.

#### **A. CONDITIONS**

1. Development must be consistent with the MCP titled "Pink Shell CPD Bay Side Master Concept Plan", stamped received April 1, 2010, except as specifically modified by conditions or deviations herein. In addition, the MCP must state that the tennis courts on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, will be an accessory parking lot for employee parking only. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The terms and conditions of all previous resolutions now affecting the subject property shall continue in force except as expressly altered by this amendment.
3. Vacation, exchange, or relocation of any easement, and/or any dedication of any part of the subject property to the public, and/or vacation of any of the subject property heretofore dedicated to the public, are not affected by approval of this zoning action.
4. Landscaping of the parking lot proposed on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, must comply with LDC Section 10-416 except to the extent permitted through any deviation explicitly approved in this Resolution. The siting of the proposed trash compactor adjacent to the boat ramp, which is shown as plate C-04 of Gora/McGahey job number 98011-10, dated 1/13/10, a copy of which is attached hereto as **Exhibit "B"**, is **APPROVED**.
5. No additional dwelling units, guest units, or timeshare units are authorized by approval of this amendment.

6. No expansion of floor area for any use, whether residential or commercial, is authorized by approval of this amendment.

7. Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. No live-aboard uses are permitted. Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.

8. No expansion to the existing "dockmaster" building on the Bayside parcel is approved. Use of this building is limited to accessory administrative offices for the leasing of boats and boat slips and management of water-related activities, a bait-and-tackle shop, and charter and tour boat ticket sales.

9. 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.

## **B. DEVIATIONS**

Deviation #1. The request for Deviation #1 from LDC Chapter 30 to allow a resort sign package has been withdrawn by the applicant on September 25, 2009 and is no longer before the Town Council for consideration.

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DCI2006-0001 and DCI2006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "**Exhibit C**". **The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-of-way for access to the proposed trash compacter.** Town Council **APPROVES deviation #2 as modified.**

## **FINDINGS AND CONCLUSIONS**

Based upon the presentations by the Applicant, staff, the LPA representative and other interested parties at the hearing, and review of the application, LPA minutes, other documents

provided and the standards for planned development zoning approval, the Town Council makes the following findings and conclusions:

1. The requested amendment to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES** comply with:
  - a. The Town Comprehensive Plan;
  - b. LDC Chapter 34;
  - c. all other applicable Town ordinances and codes; and
2. The proposed use or mix of uses, as conditioned above, **IS** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE** provided by the special conditions to the concept plan or by other applicable regulations.
4. All special conditions **ARE** reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. The proposed use **MEETS** all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following Policies:

Comprehensive Plan Policy 4-B-4 regarding the Mixed Residential Future Land Use Map category and  
Comprehensive Plan Policy 4-C-3 regarding the commercial locations.

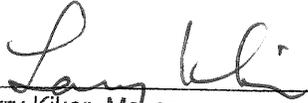
6. As to the schedule of deviations, as conditioned:
  - A. Regarding requested Deviation #1, the Town Council acknowledges the withdrawal of this request by the applicant on September 25, 2009.
  - B. Regarding requested Deviation #2, as modified, Town Council finds that, as modified above:
    1. Deviation #2, **does** enhance the achievement of the objectives of the planned development; and
    2. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will** be preserved and promoted by Deviation #2 ; and
    3. Deviation #2, **does operate** to the benefit, **and may not operate** to the detriment, of the public interest; and
    4. Deviation #2, **is** consistent with the Fort Myers Beach Comprehensive Plan.

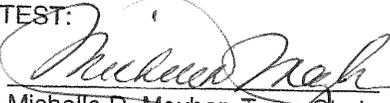
The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Acken and seconded by Councilmember Raymond and upon being put to a vote, the result was as follows:\*

Larry Kiker, Mayor aye  
Tom Babcock nay  
Bob Raymond aye

Herb Acken, Vice Mayor aye  
Jo List aye

DULY PASSED AND ADOPTED THIS 20<sup>th</sup> DAY OF JANUARY, 2010, BY THE  
**TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH**

By:   
Larry Kiker, Mayor

ATTEST:  
By:   
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By:   
Anne Dalton, Esquire, Town Attorney

\* A secondary motion was made by Councilmember Raymond and seconded by Mayor Kiker to remove the 8 parking spaces at the northwesterly end o the parking lot on the Bayside parcel, and 12 valet parking spaces at the southwesterly end o the parking lot on the Bayside parcel and to require the replacement of the tennis courts on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, with an accessory parking lot for employee parking only. This motion passed, and is set forth above. The vote was as follows: Councilmember Raymond and List and Mayor Kiker voted affirmatively and Vice Mayor Acken and Councilmember Babcock voted in the negative.

**Resolution 10-06**  
**Exhibit A**

The Northwesterly 1/2 of Lot 28, and Lots 29 through 32, all in Block D, ISLAND SHORES UNIT 4 SUBDIVISION, as recorded in Plat Book 9, Page 37, Public Records of Lee County, Florida.

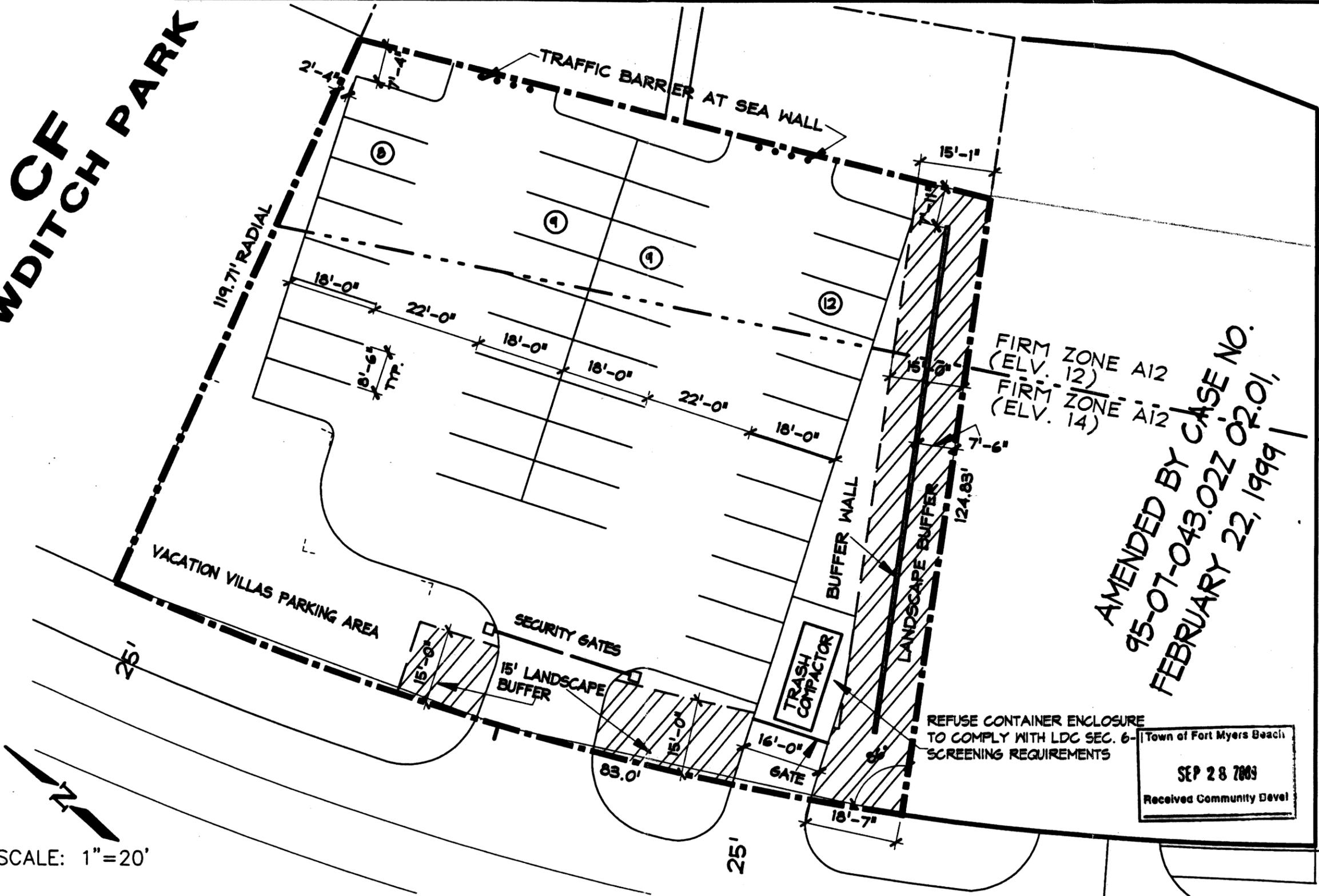
Together with:

Lots 33 through 36, and Lots 38 and 39, all in Block D, ISLAND SHORES CLUB SECTION SUBDIVISION, as recorded in Plat Book 9, Page 41, Public Records of Lee County, Florida.



# BOWDITCH PARK

SCALE: 1" = 20'



FIRM ZONE A12  
(ELV. 12)  
FIRM ZONE A12  
(ELV. 14)

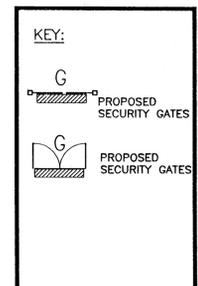
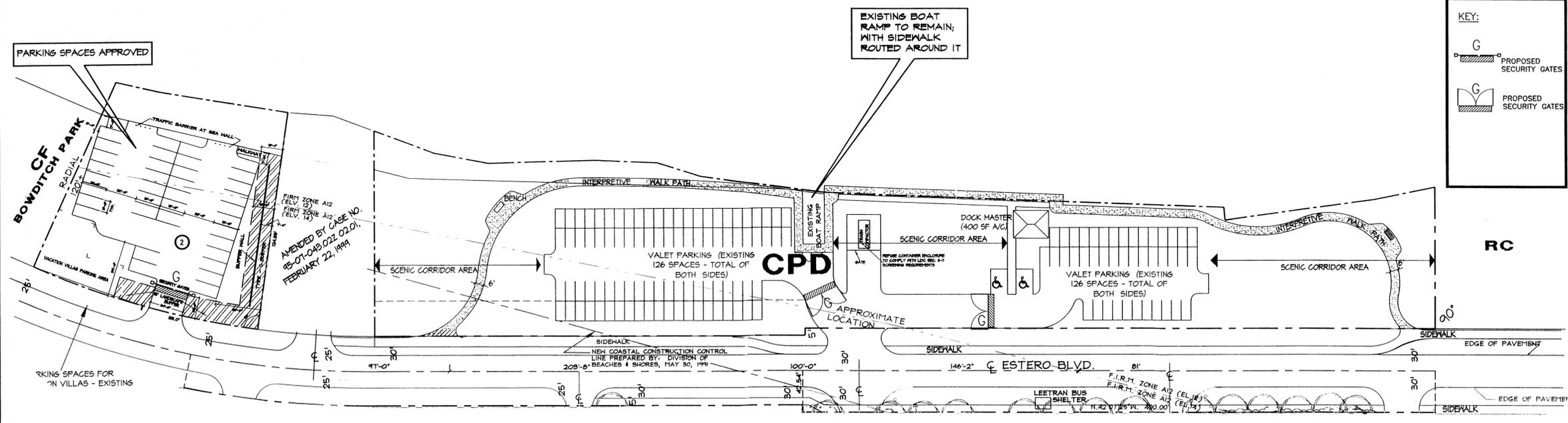
AMENDED BY CASE NO.  
95-07-043.02Z 02.01,  
FEBRUARY 22, 1999

REFUSE CONTAINER ENCLOSURE  
TO COMPLY WITH LDC SEC. 6-  
SCREENING REQUIREMENTS

Town of Fort Myers Beach  
SEP 28 2003  
Received Community Devel

|  |  |                          |                  |   |                       |
|--|--|--------------------------|------------------|---|-----------------------|
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| Gora<br>McGahey<br>ASSOCIATES IN<br>ARCHITECTURE   | 48 Building Circle Suite 203<br>Fort Myers, Florida 33907<br>239-675-8225 Fax 239-675-7128 | JOB NO.<br>95011-3       | DATE<br>04/24/01 | PARKING PLAN (GRAVEL/SHELL PARKING AREA TO INCLUDE VALET) |                       |

PLOT SCALE



C.P.D. NOTES:  
ZONING - C.P.D.

- PHASE I "PINK SHELL ISLAND SHORES" - NOT PART OF PINK SHELL RESORT
- PHASE II AND IV OF PUD PLAN (COMBINED "SANIBEL VIEW" EXISTING SIX (6) STORY, SIXTY (60) UNITS) NOT PART OF THIS APPLICATION
- PHASE III ONE SEVEN (7) STORY STRUCTURE OVER PARKING WHICH NOW EXISTS AS ESTERO ISLAND BEACH VILLAS WITH 42 UNITS AND JANUARY 10, 2000 AND JUNE 25, 2001 AMENDMENTS TO P.U.D. ONE NINE (9) STORY STRUCTURE OVER SERVICE LEVEL AND GROUND LEVEL APPROVED WITH RESORT USES AND 92 UNITS

SCHEDULE OF DEVIATIONS:

- DEVIATION FROM SIGN REQUIREMENTS - WITHDRAWN
- DEVIATION FROM LDC10-415 AND 10-416 TO ALLOW BUFFERS AND OPEN SPACE REDUCTIONS AS INDICATED ON LANDSCAPE PLAN PREPARED BY BELLOMO HERBERT & COMPANY, STAMPED "RECEIVED AUGUST 1, 2007" WAS PARTIALLY REDRAWN, AND WAS APPROVED WITH MODIFICATION AS DEPICTED ON THIS MASTER CONCEPT PLAN FOR LOTS 38 AND 39 ISLAND SHORES CLUB SECTION.

2010 REVISIONS TO MCP FOR PINK SHELL BAYSIDE CPD

- EXISTING LOCATION OF BOAT RAMP AND WALKWAY
- PARKING AREA ON LOTS 38 AND 39 BLOCK D ISLAND SHORES CLUB
- SECURITY GATES
- TRASH COMPACTOR LOCATION

**PARKING COUNT EXISTING & PROPOSED**

- ALL PREVIOUS PHASES HAVE INDIVIDUALLY SATISFIED THEIR PARKING REQUIREMENTS
- CAPTIVA VILLAS AND WHITE SANDS.  
203 SPACES REQUIRED
- EXISTING PARKING:
 

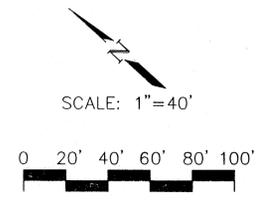
|                 |              |
|-----------------|--------------|
| GULFSIDE        | = 83 SPACES  |
| BAYSIDE (VALET) | = 126 SPACES |
| SUB TOTAL       | = 209 SPACES |
- PROPOSED ADDED PARKING:
 

|                |              |
|----------------|--------------|
| LOTS 38 AND 39 | = 36 SPACES  |
| TOTAL          | = 245 SPACES |

NOTE: THE PARKING AREA ON LOTS 38 AND 39 ISLAND SHORES CLUB SECTION ARE FOR RESORT EMPLOYEES ONLY.

Received April 1, 2010  
Town of Fort Myers Beach

**REVISED 02/23/10**  
**REVISED 03/23/10**



Gora  
McGahey  
ASSOCIATES IN  
ARCHITECTURE

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941-275-0225 Fax 941-275-7123

**PINK SHELL C P D  
BAY SIDE  
MASTER CONCEPT PLAN**

JOB NO. 98011

**SP-bs**

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