

TPI-FMB
Commercial Planned Development
 Schedule of Deviations

1. Deviation from LDC Section 34-675(c) which limits floor area ratio to a maximum of 1.4 FAR for properties fronting Estero Boulevard to permit a maximum of 1.6 FAR due to the proposed covered parking.
2. Deviation from Section 34-1803(a)(2) which permits guest units to exceed equivalency factors or 1,000 SF if a deviation is requested through a planned development rezoning to permit 108,203 SF of guest units as measured by Commercial Square Footage for measurement by Floor Area Ratio.

The TPI-FMB redevelopment project requests two deviations related to Floor Area Ratio. The first is to permit the total Floor Area Ratio of the Commercial Planned Development to exceed the maximum 1.4 FAR for properties fronting Estero and allow a 1.6 FAR. The second is to permit the requested guest units to exceed the equivalency factors and allow 108,203 square feet of the proposed hotel use for guest units to be measured by Floor Area Ratio.

Regulatory Background

The subject property is within the Pedestrian Commercial Future Land Use category which permits a Commercial Floor Area Ratio of 2.5 per Policy 4-C-2. The Town’s LDC Section 34-675(c) limits this FAR to a maximum of 1.4 for properties fronting Estero Boulevard. LDC Section 34-633 defines Floor Area Ration (FAR) as the “gross floor area of all buildings on a site divided by the site’s lot area.”

The subject property’s gross area, as demonstrated by the Boundary Survey included in the application materials, is 5.07 acres or 220,849 square feet. However, a small portion of the subject property includes improved land area for an existing pool, patio and parking within the Recreation Future Land use and Environmentally Critical zoning district. This land area is included in the CPD application boundaries; however is not permitted to be included in the Floor Area Ratio Calculations. Additionally, the proposed Commercial Planned Development includes land to be donated to public entities, which is not included in the Floor Area Ratio Calculations. Collectively, this reduces the available land area for development to **4.51 acres or 196,455 Square Feet**.

	Acres	Square Footage
Commercial Planned Development	5.07	220,849
Existing Improvements seaward of the 1978 CCL	.33	14,374

Land Donation	.23	10,018
TOTAL Developable Area	4.51	196,455

The application materials include the following demonstrating these acreages.

1. Signed and Sealed Boundary Survey, which also includes Legal Descriptions of the Parcels – required by Land Development Code Section 34-202(a)(1) and (2)
2. Signed and Sealed Legal Description of the Area of Existing Improvements seaward of the 1978 CCL – Not required by the Land Development Code, provided for clarity and review purposes
3. Signed and Sealed Legal Description and Sketch of the area to be dedicated to the Town for Pedestrian Access and Public Parking - Required by Land Development Code Section 34-212(4)l.
4. Developable Area Sheet X-104-DA of the Submitted Master Concept Plan and Exhibits Set demonstrating the total area of the portion of the property landward of the 1978 CCL – Not required by the Land Development Code, provided for clarity and review purposes

Floor Area Ratio Calculations

The Town’s Land Development Code Section 34-633 defines Floor Area Ration (FAR) as the “gross floor area of all buildings on a site divided by the site’s lot area” Section 34-675(c) limits the maximum FAR to 1.4 for properties fronting Estero Boulevard. Therefore, at 196,455 square footage of developable area, a maximum of 275,037 square feet can be developed on the subject property for commercial uses.

Floor Area Ratio includes “gross floor area...the total floor area of all stories of a building within the surrounding exterior walls (whether walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking...” as described by Section 34-633 of the Town’s Land Development Code. Due to this definition all of the development within the four walls of a principal structure as well as the proposed parking under the elevated building are included in the calculation of Floor Area Ratio. Outdoor seating, outdoor recreation, and other uses not within a building would not be included in the Floor Area Ratio Calculations.

It is important to note that from the time the land development code was adopted **until 2008, large portions of the Town were not located within the V-zone**. The Code of Federal Regulations, **requires** that all enclosed space for commercial and residential uses be located **above** the base flood elevation of the V-zone. In the case of the subject property the base flood elevation with the V zone varies from 13 to 17 feet. LDC Section 34-633(1) requires “all area below an elevated building that is six feet or more in height, plus all stories of covered parking...” to be calculated toward gross floor area to be counted toward FAR. As a result of this requirement, the 102,318 square feet of ground level parking under the hotel building **must be included** in the FAR calculation even though no commercial uses can be established in this area due to federal, state and local regulations. When considered with the total 218,689 Square Feet of Commercial Uses elevated above the Velocity Zone, **the inclusion of the 102,318 parking area – which must be 6**

feet or more in height due to the V zone – increases the FAR of the proposed development to 1.6.

Without the parking under the elevated building, the proposed commercial square footage establishes a Floor Area Ratio of 1.11, well under the permitted maximum of 1.4 established by LDC Section 34-675(c)(2)

Bay Side	Square Footage	Notes
Hotel	174,055	
Ancillary Retail	2,301	Existing Building at Fifth Ave and San Carlos Boulevard. Known as Ocean Jewel
Parking	102,318	Under proposed Hotel Building
TOTAL Bay Side Floor Area	276,373	
Gulf Side		
Hotel	16,111	
Restaurant & Administrative Offices	5,643	Accessory to Outdoor Commercial Recreation
Restrooms	2,534	Accessory to Outdoor Commercial Recreation
Restaurant	16,029	
Indoor Storage	2,020	
TOTAL Gulf Side Floor Area	26,226	
Pedestrian Overpasses		
	2,711	Publicly Accessible Stairwells and Elevators

Building Massing Regulations

The Town’s Land Development Code utilizes Floor Area Ratio to identify the **amount** of commercial square footage that can be permitted. Additional regulations associated with the Downtown Zoning District regulate the size, mass, frontage and design of the commercial buildings to ensure the street frontage is not overtaken by the proposed building.

Regulation	LDC Section	Notes
Build-to Lines	34-674(a)(1)	Establishes the maximum front setback
Setback lines	34-674(b)(1)	Establishes the minimum side and rear setback
Building Frontage	34-675(a)(1), (3), (4)	Establishes the minimum building frontage based on lot frontage
Building Height	34-675(b)(3)	Establishes the maximum height of the building

The requirements for Building placement, frontage, height, and massing outlined in LDC Section 34-674 and 675 ensure, regardless of Floor Area Ratio, that the proposed buildings will not crowd or impose upon the street frontage.

Essentially, these additional regulations create a shape or “box” on the subject property within which commercial square footage (floor area ratio) can be placed. The proposed Commercial Planned Development seeks to comply with the Downtown Zoning District regulations to the maximum extent possible. Specific conditions apply to the subject property that prohibit the Hotel Building from complying with the Build-to Line and side setbacks; however this is to maintain the existing sidewalk easement and establish planting areas adjacent to the building. The remaining regulations the proposed development complies with.

Bay Side Hotel Building Regulations

Regulation	LDC Section	Notes
Build-to Lines	34-674(a)(1)	Maximum front setback 0 to 5 Feet
Estero Boulevard		Building is setback 9 feet from property boundary
Crescent Street		Building is setback 9 to 12 feet from property boundary
Fifth Street		Building is setback 10 to 15 feet from property boundary
Intersection of Crescent St. & Fifth St.		Building is setback 45 feet from Rear property boundary
Building Frontage	34-675(a)(1), (3), (4)	Minimum building frontage Estero Boulevard 70% Crescent Boulevard & Fifth Street 35%
Estero Boulevard		Building Frontage is 95%
Crescent Street		Building Frontage is 91%
South Side of Fifth Street		Building Frontage is 66%
North Side of Fifth Street		Building Frontage is 88%
Building Height	34-675(b)(3)	Maximum height from property’s location North of Estero is not included
Estero Boulevard		40 feet above base flood elevation

As a result of siting the proposed Hotel Building back from the adjacent streets to maintain the existing sidewalk easements and establish areas for landscaping adjacent to the streets and proposed building, enhancements that are not required by the land development code are provided. These setbacks restrict the property more than the regulations of the Downtown Zoning District; however the maximum height limitation in feet is maintained.

Gulf Side Restaurant

Regulation	LDC Section	Notes
Build-to Lines	34-674(a)(1)	Maximum front setback 0 to 5 Feet
Estero Boulevard		Building is setback 5 feet from property boundary
Setback lines	34-674(b)(1)	Minimum side setback 5 feet Minimum rear setback 25 feet
Side		Building is setback 5 feet from property boundary
Rear		Building is setback 25 feet from CPD Boundary
Building Frontage	34-675(a)(1), (3), (4)	Minimum building frontage Estero Boulevard 35%
Estero Boulevard		Building Frontage is 15%
Building Height	34-675(b)(3)	Maximum height South of Estero is 40 feet above based flood elevation
Estero Boulevard		37 feet 6 inches above base flood elevation

Gulf Side Outdoor Commercial Recreation

Regulation	LDC Section	Notes
Build-to Lines	34-674(a)(1)	Maximum front setback 0 to 5 Feet
Estero Boulevard		Existing Building is setback 0 feet from property boundary
Setback lines	34-674(b)(1)	Minimum side setback 5 feet Minimum rear setback 25 feet
Side		Building is setback more than 5ft from property boundary
Rear		Building is setback 54 feet from CPD Boundary
Building Frontage	34-675(a)(1), (3), (4)	Minimum building frontage Estero Boulevard 35%
Estero Boulevard		Building Frontage is 15%
Building Height	34-675(b)(3)	Maximum height South of Estero is 40 feet above based flood elevation
Estero Boulevard		Existing Building is 16 feet from grade

The proposed development purposefully clusters a majority of the commercial square footage on the Bay Side portion of the property. Due to the clustering, the increased setbacks of the hotel Building and the maintenance of the building height limitation, the requested Floor Area Ratio of 1.6 will not overtake any of the street frontages. In addition, the proposed landscaping and

screening as well as the proposed architecture of the Hotel Building will ensure the view from the pedestrian streetscape and existing surrounding developments is visually appealing.

Commercial Uses

As previously described the requested Commercial Planned Development seeks to redevelop the subject property by clustering most of the requested uses on the Bay Side parcel. The clustering of the proposed commercial uses in this manner locates the private commercial uses on the Bay Side parcel and the uses open to public patronage on the Gulf Side parcel while increasing the views of the Gulf of Mexico from Estero Boulevard.

Commercial uses are identified in the Town's Comprehensive Plan by Policy 4-B-12 as those uses "that involve the sale or rental of goods or services, including businesses such as retail stores, offices, restaurants/bars, service/craft rental businesses, RV Parks, and **hotels/motels/resorts**; churches and civic buildings are also included in this category." Guidance regarding the intensity of these uses is outlined by Policy 4-C-4 "the maximum intensity of allowable commercial development in any category may be controlled by height regulations or other provisions." The policy also states that "the Land Development Code will encourage more intense commercial uses **only** in the "Pedestrian Commercial Category" and establishes that floor-area-ratios in the Pedestrian Commercial category may be as high as 2.5. The effect of these policies is to establish that commercial floor area ratio is an acceptable measurement of intensity for commercial uses that will be controlled by other provisions of the Land Development Code, which are Sections 34-674 and 34-675, for the Downtown Zoning District.

The second requested deviation seeks to utilize Commercial Floor Area Ratio to regulate the proposed guest units consistent with the provisions of the Comprehensive Plan outlined above. The proposed Hotel Building on the Bay Side parcel and the upper Guest Units proposed on the Gulf Side Parcel is 292,480 square feet. This would permit 102,318 square feet of ground level parking, meeting rooms, supporting restaurant, bar and retail, and 290 guest units. These units will be self supported by ancillary uses provided interior to the Hotel Building and Meeting Building as well as the Ancillary Retail proposed on the former Ocean Jewel parcel. In addition to a Restaurant and Outdoor Commercial Recreation Facility proposed on the Gulf Side parcel. These uses are also identified as Commercial consistent with Policy 4-B-12.

The Master Concept Plan identifies the proposed location of the principal uses; Hotel, Restaurant, and Outdoor Commercial Recreation on Sheet X-110-MCP.05 Property Development Regulations. Ancillary Uses are included to support the Hotel and Outdoor Commercial Recreation:

Hotel

- Main Building located between Estero Boulevard, Crescent Street and Fifth Street.
- Ancillary Retail (formerly known as Ocean Jewel) an existing building to be renovated under the "50% rule" located at the intersection of San Carlos Boulevard and Fifth Street.
- Ancillary Meeting Building located at the intersection of San Carlos Boulevard and Fifth Street.

- Approximately 14 Guest Units are proposed above the Restaurant Building on the 3rd Floor

Outdoor Commercial Recreation

- Ancillary Restrooms (formerly known as the Cigar Hut) an existing building to be renovated under the “50% rule” located abutting the Estero Boulevard right of way.
- Ancillary Restaurant and Administrative Offices located near the rear of the Planned Development Boundary.

Clustering of Commercial Uses

The proposed development represents an opportunity to re-establish a hotel use in an area that has lost previously existing hotels and for numerous public benefits to the Town of Fort Myers Beach. Crescent Beach Family Park is an important community amenity complimenting Lynn Hall Memorial Park and providing a large view corridor at the gateway to the Town of Fort Myers Beach at the base of the Matanzas Pass Bridge. However, it also represents the loss of three former hotel buildings, which have not been replaced. A majority of the commercial square footage requested has been purposefully clustered on the Bay Side parcel in a location that was previously approved for a hotel use, immediately adjacent to an existing hotel, and across Estero Boulevard from previous hotels consistent with Policy 4-A-9.

As justification for requesting guest units to be measured through Commercial Floor Area Ratio and permitting a maximum 1.6 Floor Area Ratio, TPI-FMB, LLC is providing numerous benefits to the Town of Fort Myers Beach.

Gulf View Corridors

The requested Commercial Planned Development is the aggregation of 32 individual platted lots and 2 parcels as demonstrated by the signed and sealed boundary survey included in the application materials. Due to the aggregation of these lots and parcels, TPI-FMB has established a site design that clusters a majority of the proposed development on the Bay Side parcel north of Estero Boulevard.

Approximately 90% of the proposed development is located on the Bay Side parcels to establish the proposed Hotel Use. Clustering a majority of the commercial square footage on the north side of Estero Boulevard ensures large view corridors to the Gulf of Mexico can be established. Additionally, the building height maximums of the Town’s Land Development Code have been maintained to ensure views of the Gulf are maintained from the adjacent Matanzas Bridge as residents and visitors enter the island from mainland Lee County.

The uses proposed on the Gulf Side parcel south of Estero Boulevard utilize minimal floor area for structures and aligns structures north to south to improve views of the Gulf of Mexico from Estero compared to the existing development. The structures proposed on the Gulf Side parcel are also designed to step down in height. The proposed Restaurant is 3 feet lower than the allowed maximum building height while the proposed ancillary Restaurant and Administrative

Offices to the Outdoor Commercial Recreation are 12 feet lower than the maximum building height and the ancillary restrooms maintain an existing building 16 above grade.

Between the proposed Restaurant and the buildings that support the Outdoor Commercial Recreation are large open spaces, preserving view corridors from the pedestrian realm along Estero as well as ensuring view corridors from the top of the Matanzas Pass bridge are maintained over the proposed hotel building.

Currently from the Pierview to the Mermaid Bar, views of the Gulf of Mexico are obstructed by the existing buildings and the angled platted configuration of the existing rights of way.

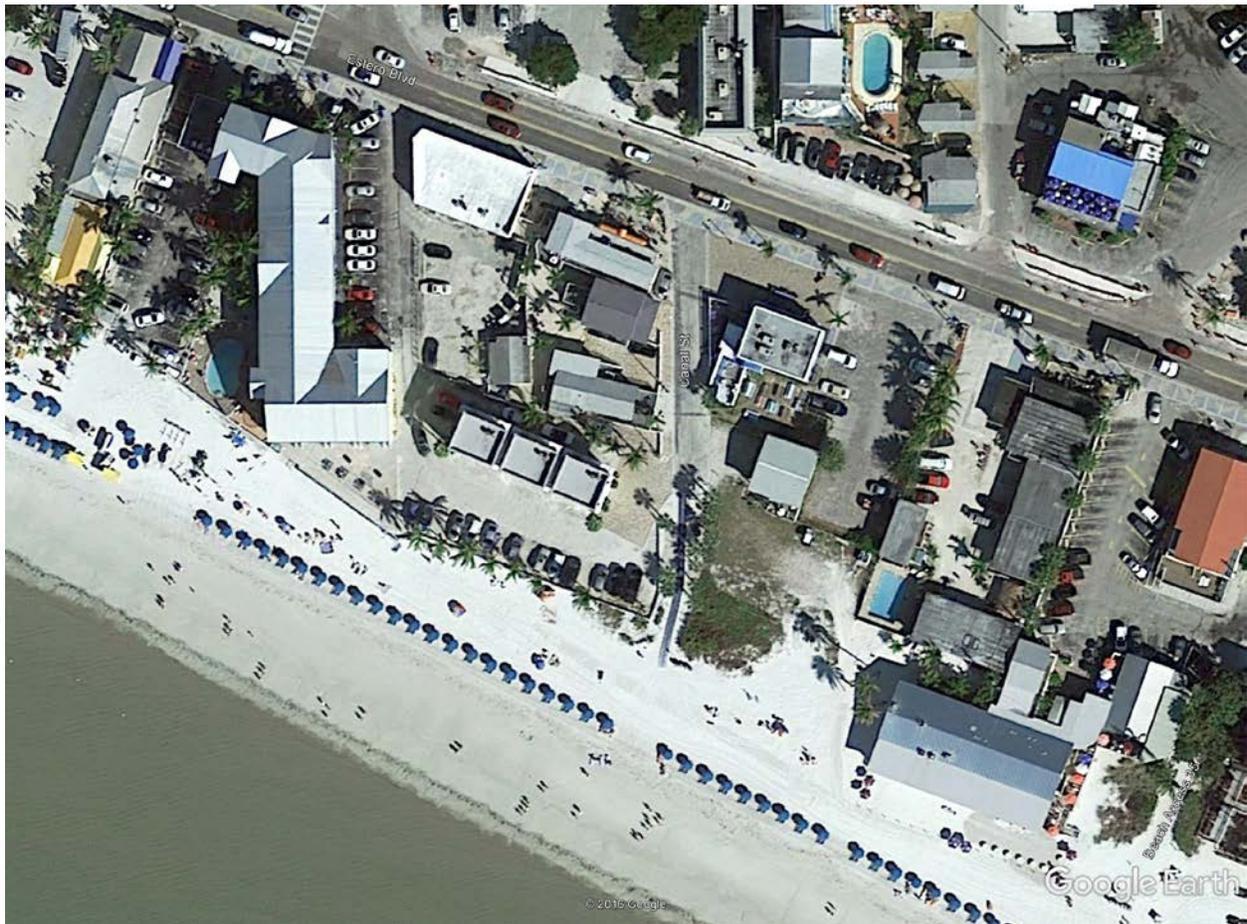


Figure 1. Existing Gulf Front Development



Figure 2. Existing View of the Gulf from Estero Boulevard between the Pierview and Cigar Hut Building



Figure 3. Existing View of the Gulf Down Canal Street from Estero Boulevard

The proposed site plan will develop a new restaurant building on the existing Pierview property and retains the existing Cigar Hut building to provide supporting restrooms to the proposed Outdoor Commercial Recreation. A second new building is proposed immediately south of the Cigar Hut building, all other obstructions along Estero Boulevard are proposed to be eliminated, opening a view corridors to the Gulf of Mexico.

Beginning at the western property boundary, the proposed Master Concept Plan eliminates the existing angled streets and buildings to establish a proposed restaurant building and adjacent pedestrian corridor perpendicular to Estero Boulevard. The pedestrian corridor and perpendicular orientation of the proposed building establishes a view corridor to the Gulf of Mexico approximately 72 ft wide in addition to beach access and pedestrian circulation at grade level.

A second proposed building is located further east on the subject property and aligns with the Cigar Hut Building, which is proposed to remain. The alignment of the existing and proposed building, ensures a large view corridor approximately 252 ft wide is provided. Within this view corridor is a second public access point, which provided pedestrian access to the beach at grade as well as vehicular access and proposed parking.

Improved Beach Access

On the Gulf Side of the proposed development are two beach access points improving access to the water for the existing and future populations as desired by Objective 5-E and Policies 4-A-4 and 4-A-6. TPI-FMB, LLC is proposing to provide a Pedestrian Beach Access from Estero Boulevard through to the beach front immediately adjacent to the proposed public restaurant adjacent to the western boundary. This new public pedestrian access from Estero Boulevard to the Gulf of Mexico will provide an enhancement that benefits both visitors and residents to the Town.

The second public access point is located immediately adjacent to the eastern boundary and is designed to provide pedestrian and vehicular access to the beachfront. On either side of the proposed access, parking spaces are proposed, approximately 23-26 can be accommodated in this location to provide much needed beach parking within the Downtown Core consistent with Policies 4-A-4, 4-A-6 and 5-E-2. TPI-FMB, LLC has offered, should the Town accept, to provide these spaces to the Town of Fort Myers Beach for metering. The additional metered parking will provide improved beach access for the motoring public as well as an additional revenue source for the Town.

Stormwater Management System

The aggregation of 34 parcels and proposed redevelopment will require design and permitting of a Stormwater Management System with the Town of Fort Myers Beach as well as South Florida Water Management District.

However, TPI-FMB, LLC is proposing to enhance the proposed stormwater management system by providing underground vaults and designing the system to have extra storage capacity consistent with Policies 3-D-7, 7-C-2 and 7-H-8. A vaulted system will promote additional storage area, which can be made available to the Town should Staff agree to accept.

Currently due to the age of the existing development, the subject property does not provide any stormwater collection, treatment, and management. The proposed site design will reduce the impervious area of the subject property by increasing open spaces and locating parking under the building, which will provide improvements to the water quality of the stormwater collected

on the subject property. After collection, the management system will treat the stormwater further improving water quality. An analysis of the proposed site design, utilizing methods established by the South Florida Water Management District, demonstrates a 30% improvement in water quality from the current conditions of the subject property. The underground stormwater vaults will provide increased collection capacity for the subject property that is expected to be in excess of the amount necessary to support the proposed development. The excess storage capacity of the vault system can be utilized to support other redevelopment projects within the vicinity, improving the stormwater conditions for properties surrounding the subject property as well as supporting the Town's efforts to establish a municipal stormwater management system. Similar systems, above and below ground, have been implemented in municipalities with historic development (City of Fort Myers, City of Kissimmee, etc.)

3. Deviation from LDC Section 10-416(d)(2) which requires a Type D buffer which is a minimum of 15 feet in width having a minimum of 5 trees and a double staggered hedge row to form a 3 foot continuous visual screen between parking supporting a commercial use and a right of way to allow the right-of-way and sidewalk buffer plan outlined on Sheet X-502-RW.00 through X-504-RW.04 of the Master Concept Plan and Exhibits Set for the proposed Hotel and Meeting Buildings.

Due to a portion of the Bay Side development being located within the Velocity (V-zone) of the Town's Flood Insurance Rate Maps, the proposed Hotel Building has been elevated above Base Flood. The Code of Federal Regulations, **requires** that all enclosed space for commercial and residential uses be located **above** the base flood elevation of the V-zone. In the case of the subject property the base flood elevation with the V zone varies from 13 to 17 feet. As a result of the inability to close the area within the V zone for commercial uses, the applicant is proposing to provide parking to support the requested development.

The Land Development Code requires Parking defined as "parking and vehicle use areas for the MF-R and COM use categories" to provide a Type D buffer when adjacent to a right of way. However, the Land Development Code also establishes:

- 34-662(b)(7) Build to line requirements **shall take precedence** over any buffer or setback requirements impose by other portions of this code.
- 34-674(a)(1)b. Build-to lines are 0 to five feet for all of First, Second, Third, and Fifth and the south side of Estero Boulevard from the Sky Bridge to Miramar Street.

The build-to lines for Estero Boulevard at 0 to 5 feet and the subject property is already encumbered by existing sidewalk easements adjacent to Estero Boulevard and Crescent Street. The existing sidewalk would encumber 7 feet of the 15 ft wide required Type D buffer, which exceeds the maximum 20% of the buffer width that may be impervious surface as referenced in 10-416(d)(4) by 30%

To address the exiting conditions of the subject property, the requirements of the Downtown Zoning District and the necessary buffer to the parking the applicant has worked extensively with Town Staff and Town Consultants to establish the provided right of way and sidewalk buffer plan.

Estero Boulevard

A 5ft sidewalk easement was recorded for the length of the subject property along Estero Boulevard. Due to this easement, the required Build-to Line of 0 to 5 Feet could be accommodated; however none of the required plantings of the 15ft Type D Buffer could not be provided to screen the proposed parking.

A detailed Streetscape Cross-Section has been proposed to address this condition which permits A sidewalk along Estero will be provided utilizing the existing Estero ROW as well as portions of the sidewalk easement on the subject property. The proposed sidewalk will vary in width from 9 to 12 feet. Internal to the sidewalk, at least 4 feet off the front of the curb along the sidewalk trees will be provided consistent with the Avenue of the Palms in Tree Grates. This will permit the sidewalk to be developed around the trees enabling pedestrian movement and providing shade. Between the back of the proposed sidewalk and the proposed building a planting area is proposed. This area will include a double row of shrubs and a “green screen” to shield the proposed parking. The Green Screen, as depicted in the cross section, is proposed to be a trellis attached to the building and a vegetative vine. Overtime the vine will grown along the trellis and shield pedestrians and the traveling public along Estero from the parking under the elevated building. The applicant proposes that at the time of planting the Vegetative Vine be a 25 gallon trellis and 8 feet in height with one vegetative vine required per building trellis.

Crescent Street

A 7ft sidewalk easement was recorded for the length of the subject property along Crescent Street. Land Development Code Section 34-662 establishes that Corner Buildings are to maintain Build-to Lines around the corner and take precedence over buffer and other setback requirements. Due to this easement and the requirements of 34-662, a 0 to 5 Build-to line cannot not be accommodated and none of the plantings or required 15ft Type D Buffer can be provided to screen the proposed parking.

A detailed Streetscape Cross-Section has been proposed to address the existing conditions of the subject property. The existing 7' sidewalk easement will be maintained and planting area will be provided between the sidewalk and approximately 1.5 feet off the front of the curb for trees to be installed consistent with the Avenue of the Palms. Between the back of the proposed sidewalk and the proposed building a 5 ft wide planting area is proposed to include shrubs and a “green screen” to shield the proposed parking. The Green Screen, as depicted in the cross section, is proposed to be a trellis attached to the building and a vegetative vine. Overtime the vine will grow along the trellis and shield pedestrians and the traveling public along Estero from the parking under the elevated building. The applicant proposes that at the time of planting the Vegetative Vine be a 25 gallon trellis and 8 feet in height with one vegetative vine required per building trellis.

Due to the Commercial Design Requirements of 34-955(e) to provide a Façade Projection, Trees cannot be accommodated adjacent to the proposed building. Any awning, canopy, balcony, bay window, arcade or colonnade proposed would limit the maximum tree height to less than 14ft and create conflicts for tree maintenance. Additionally, a number of existing conflicts existing

related to utilities, stormwater, and electric. Therefore, consistent with the extensive coordination with Town Staff and Town Consultants, the proposed cross section locates the required trees close to the front of curb.

Fifth Street

The Fifth Street frontage is more uniquely shaped than the remainder of the subject property due to the expansion of the right-of-way from the 50ft provided in the Business Center Plat to the existing 61ft provided at the Intersection of Fifth and Crescent Streets. The Land Development Code Section 34-662 establishes that Corner Buildings are to maintain Build-to Lines around the corner and take precedence over any buffer or other setback requirements. Further, the Town desires pedestrian interconnectivity to be provided along Fifth Street. Due the unique geometry of the subject property, the requirements of 34-662, and the need to provide a sidewalk, the required 0 to 5 Build-to line and 15ft Type D Buffer cannot be provided.

To maintain consistency with the improvements proposed adjacent to Crescent Street, the proposed design includes a 7ft sidewalk on the south side of Fifth Street and a planting area is provided between the sidewalk and the street. As with Crescent Street, approximately 1.5 feet off the front of the curb trees will be installed in a 9 ft wide Tree Yard consistent with the Avenue of the Palms. Between the back of the proposed sidewalk and the proposed building, a 6' wide planting area is proposed to include shrubs and a "green screen" to shield the proposed parking. The Green Screen, as depicted in the cross section, is proposed to be a trellis attached to the building and a vegetative vine. Overtime the vine will grow along the trellis and shield pedestrians and the traveling public along Estero from the parking under the elevated building. The applicant proposes that at the time of planting the Vegetative Vine be a 25 gallon trellis and 8 feet in height with one vegetative vine required per building trellis.

A similar condition is proposed for the Meeting Building located North of Fifth Street. In this location a 5ft sidewalk is proposed and a planting area is proposed between the sidewalk and the street. The 5ft wide planting area located 1.5ft off the front of the curb will permit trees to be installed in a 5ft tree yard consistent with the Avenue of the Palms. Between the back of the proposed sidewalk and the building, a 5ft wide planting area is proposed to include shrubs and a "green screen" to shield the proposed parking. The Green Screen, as depicted in the cross section, is proposed to be a trellis attached to the building and a vegetative vine. Overtime the vine will grow along the trellis and shield pedestrians and the traveling public along Estero from the parking under the elevated building. The applicant proposes that at the time of planting the Vegetative Vine be a 25 gallon trellis and 8 feet in height with one vegetative vine required per building trellis.

4. Deviation from LDC Section 34-675(b)(3), which allows properties to be a maximum of 40 feet above base flood elevation and no taller than three stories to allow for a maximum of 40 feet above base flood elevation and no taller than four stories.

The applicant notes the Land Development Code **does not** include a height limitation for the Bay Side parcel. This deviation is requested out of an abundance of caution and as a result does not follow typical practice for a deviation request.

For purposes of determining the maximum height limitation for the Bay Side parcel a review of the existing approvals and land development regulations was conducted. The Bay Side parcel is currently subject to an approved Commercial Planned Development (CPD) per Resolution of the Town Council of The Town of Fort Myers Beach, Florida Resolution Number 02-07. This resolution clearly defines the maximum height for the Bay Side parcel as, "...buildings not to exceed 40 feet above base flood elevation."

It is appropriate to rely upon Resolution Number 02-07 for the maximum height of Bay Side parcel due to LDC Section 34-217(c), which states,

"The terms and conditions of the planned development zoning approval (other than the master concept plan as set forth in § 34-220 of this chapter) **run with the land and remain effective in perpetuity** or until a new zoning action is approved by the town council. All developments must remain in compliance with the terms and conditions of the zoning approval."

Furthermore, the Town's Land Development Code did not establish a maximum height limitations for this property.

For purposes of the deviation request, as suggested by Town Staff, a discussion of the LDC regulations compared to the existing resolution is provided.

The Town's LDC Section 34-631 requires building heights to be measured in feet and stories. While the CPD Resolution 02-07 establishes the necessary height limit as "measured in feet" of 40 feet, it is apparent there was no identification of a maximum number of stories as currently required per LDC Section 34-631(a)(1) and shown on Figure 34-1-a.

The Town permits deviations to be requested "to allow design flexibility in development land" consistent with LDC Section 34-932(b). This process provides the town the opportunity to evaluate the requested deviation through the unique circumstances and proposed development.

Additionally, LDC Section 34-675(b) *Building height* provides varied limits to the building heights per Section 34-631(a)(1) for specific properties within the Downtown Zoning District which is consistent with the intent of Policy 4-C-4 of the town's comprehensive plan which states "different heights may be applied to officially designated redevelopment areas". It is important to note that the proposed Bay Side property portion of the proposed development does not fall within any of the geographically identified areas referenced under LDC Section 34-675(b). As such, and based on the building height maximum of 40 feet granted per Resolution Number 02-07, the portion of Section 34-675(b) most applicable to the property is Subsection 34-675(b)(3) and is the foundation of the deviation sought under the planned development review process.

The proposed Bay Side hotel structure is designed to be consistent with a height measurement of 40 feet per Resolution Number 02-07. See Sheet XA-301 Building Sections. The hotel structure is also designed to be elevated to be at least 16.5 feet above sea level due to its location within a velocity flood zone (VE-15) and the provision of 1.5 feet of freeboard as allowed per LDC Section 34-631(a)(2)(e). Through the adopted Comprehensive Plan's Future Land Use Element Policies 4-E-3 and 4-E-4, the Coastal Management Element's Goal 5, Policies 5-A-1 and 5-B-2 and floodplain regulations outlined in LDC Article IV, the town recognizes the critical need to elevate structures within flood zones.

It should be noted that from the original adoption date of the town's land development code until 2008, significant areas of the town were not located within the velocity flood zones (V-zones)/coastal high hazard areas. To properly address the impact of the many properties on the north and south sides of Estero Boulevard within the velocity flood zone, the town established that when determining building height, the "ground" or "from" measurement is taken **from base flood elevation (inclusive of freeboard)** to the entitled height maximum as "measured in feet" and "measured in stories" consistent with LDC Sections 34-631(c) through (e). Additionally, per LDC Section 34-675(b)(2), when addressing height limits, the town allows for an additional story to the maximum story limit if the project is within a specific geographical area and is specifically designed to be "an elevated building without enclosed space on the first story."

The subject property is unique because it is not specifically tied to any of the geographically areas described overall in LDC Section 34-675(b); however, it is surrounded by properties that can achieve an additional story when designed as "an elevated building without enclosed space on the first story."

As a result of the property's location with a Velocity zone, the proposed redevelopment elevates the proposed hotel building above base flood and includes 3 feet of freeboard. This development condition adheres to the Town's floodplain regulations as well as protecting the public health, safety and welfare. The elevation of the first floor, has the added benefit of improving water quality as related to stormwater management and permits this area to be utilized for the required on-site parking. Therefore, the proposed design results in "an elevated building without enclosed space on the first story consistent with the intent of LDC Section 34-675(b)(2).

Furthermore, the overall proposed redevelopment is located within the Times Square District of the Downtown Core Area as described in the Town's Comprehensive and seeks to cluster a significant portion of the commercial uses on the Bay Side parcel to provide increased view corridors to the Gulf of Mexico for pedestrians and those traveling over the Matanzas Bridge as desired by the Town's Comprehensive Plan.

Based on adhering to the approved height measurement of 40 feet per Resolution Number 02-07; the unique circumstances of the property's location in a designated redevelopment area but not able to be specifically applied to any geographic area as described in LDC Section 34-675(b); and design elements related to elevating the proposed structure on the Bay Side property,

justifies the proposed hotel structure building height to maintain a maximum of 40 feet above base flood elevation and be no taller than four stories.