

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 09-10

WHEREAS, McHarris Planning and Design ("Applicant") has requested to rezone 1.38 +/- acres of upland from DOWNTOWN to Commercial Planned Development (CPD) and zone 0.069 +/- acres of submerged land to CPD, to allow phased redevelopment of the subject property with a mixed-use complex to include a variety of retail, hotel/motel, and marina uses to include a 234-car parking structure; and

WHEREAS, the subject property is located at 645 Old San Carlos Boulevard and 445 Old San Carlos Boulevard, Fort Myers Beach; and

WHEREAS, the Applicant has indicated the property's current STRAP numbers are 24-46-23-W3-00026.0000 and 24-46-23-W3-00026.0030 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 12, 2008, 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 2008-42; and

WHEREAS, a public hearing was advertised for February 2, 2009, at which time the Town Council continued the hearing at the request of the Applicant to May 4, 2009, at which time the Town Council continued the hearing to August 10, 2009, at which time the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution, the request of Applicant, including but not limited to the sworn statement by counsel for Applicant that applicant did not oppose the position of the LPA regarding Applicant's request to zone 0.069± acres of submerged land to CPD, 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 the 1.38± acres of upland legally described in the attached **Exhibit A** from DOWNTOWN to CPD (Commercial Planned Development), subject to the **sixteen (16)** conditions and **three (3)** deviations set forth with specificity below. The Town Council **DISAPPROVES** the request to zone the 0.069± acres of submerged land legally described in the attached **Exhibit B** to CPD.

A. CONDITIONS

1. Development must be consistent with the master concept plan (MCP) titled "Snug Harbor" for case FMBDCI2007-0005, stamped received January 5, 2010, except as specifically modified by conditions or deviations discussed herein. In accordance with LDC Section 34-216(b)(5), the MCP must be updated to reflect the deviations and conditions approved by Town Council. 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:
NONE
Accessory:
NONE

Lodging

Principal:
Hotel/Motel
Resort
Timeshare units

Accessory:
Resort accessory uses
Subordinate commercial uses
Group quarters (as limited by condition #13 below)

Office

Principal:
Offices, general or medical

Personal Services
Automobile rental (by special exception only)
Accessory:
Administrative office
Commercial accessory uses
Subordinate commercial uses

Retail

Principal:
Bar or cocktail lounge (by special exception only)
Laundromat
Parking lot, shared permanent
Personal services
Restaurant
Retail store, small
Retail store, large (by special exception only)
Recreation facilities, commercial (by special exception only)
Accessory:
ATM

Marine

Principal:
Dock for use by water taxi or water shuttle
Accessory:
Dock for use by occupants of principal use
Dock for lease to non-occupants of principal use

Civic

Principal:

Recreation facility, public (by special exception only)
 Transit terminal (by special exception only)
 Cultural facility (by special exception only)
 Essential services building (by special exception only)

Accessory:

Bay access
 Essential services
 Essential services equipment
 Dwelling unit, caretaker (limited to one unit only)

Principal retail and office uses are limited to the 14,486 square feet of floor area proposed on the ground floors of the Phase II and Phase VII buildings as indicated on the MCP.

Site Development Regulations

Minimum Lot area:	60,100± square feet
Maximum Floor Area Ratio:	1.823
Maximum Building Height (feet):	40 feet above base flood elevation 52 feet above base flood elevation for partial 4 th floor (see deviation #1 and condition #15 below)
Maximum Building Height (stories):	4 (including enclosed or unenclosed space below base flood elevation as one story, see deviation #1 and condition #15 below)
Minimum setbacks and build-to lines:	
Old San Carlos Boulevard:	0-foot build-to line
Southwesterly side:	0-foot setback
Rear of Phase I:	0-foot setback
Floor Area allocations:	
Phase I (Parking Garage):	61,098 square feet
Phase II (Hotel/liner):	44,845 square feet
Phase V ("waterfront"):	DENIED
Phase VI ("waterfront"):	DENIED (total 5400 square feet requested for Phase V and Phase VI buildings)
Phase VII (Condo liner):	3600 square feet

3. Nothing in this rezoning, including any of the attached conditions and deviations, may be construed as a variance from the provisions of LDC Chapter 6, Article IV.

4. The construction proposed to occur in Phase VII, a new building between the existing Marina Village at Snug Harbor building and the Bayfront Pedestrian Plaza, must comply with all provisions of the Florida Building Code applicable at the time of permitting. The setback from the lot line separating the proposed Phase VII building and the existing Marina Village building may be zero (0) feet if both the new building and the existing building are constructed in accordance with all building code requirements applicable to attached buildings, in cooperation with the owners of the existing building and proof thereof must be provided at the time of permitting. Otherwise the Phase VII building must comply with all applicable code requirements and must not obstruct egress or ventilation to the existing Marina Village building.

5. The 100 parking spaces within the parking garage that exceed the minimum number of spaces required for the uses within this planned development must be made available to the general public as a shared permanent commercial parking lot at all times. In cooperation with the Town, the developer must seek authorization from the governmental entity with jurisdiction over State Road 865 to install at a suitable location a permanent public service sign under LDC Section 30-6(a)(8). If authorized by that entity, this sign must be visible by motorists prior to reaching the first intersection of State Road 865 on Estero Island, must clearly direct motorists to the parking garage, and must indicate, using a continuously updated variable message, the number of spaces in the garage remaining available to the general public. Unless authorization to construct this sign is refused, the sign must be constructed prior to the issuance of a certificate of compliance for Phase I (parking garage) and maintained for the life of the parking garage at the expense of the developer or its successor(s) in interest. If the entity with jurisdiction over State Road 865 refuses authorization to construct this sign, written evidence to that effect must be provided to the Town prior to the issuance of a certificate of compliance for Phase I (parking garage) and the developer or successor(s) in interest must cooperate with the Town to find a suitable alternative location for the sign.

6. 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.

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

8. No structure may be placed in or over, and no work may occur in, any navigable water of the United States unless properly authorized by the United States Army Corps of Engineers or its designee.

9. No stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be constructed or altered on the subject property, including submerged lands and riparian leased areas, without proper permit or exemption, and unless in compliance with all conditions of such permit or exemption, from the South Florida Water Management District or Florida Department of Environmental Protection, as applicable. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site.

10. Any and all unmaintained underground storage tanks or similar containers now known or subsequently discovered on the subject property must be rehabilitated in accordance with all applicable state and federal requirements. Prior to issuance of a development order, the developer must test the subject property for any type of pollution resulting from current or prior uses. The results of such test must be provided to the Town and any other governmental entity with jurisdiction thereof within seven (7) working days of developer's receipt thereof and the developer must follow all recommendations and requirements by such entity or entities promptly and provide proof thereof to the Town. Prior to the Town Council's execution of any resolution

regarding this CPD, the developer must enter into a separate Agreement to indemnify and hold the Town harmless against any claims, including third-party claims, resulting from such current or former uses regardless of the person or entity which created or was previously involved with such use(s). An official determination by the agency or agencies with jurisdiction over these matters that the property complies with all relevant environmental regulations must be provided to the Town to satisfy this Agreement. The Agreement must be recorded in the Official Records of Lee County, Florida, at the developer's sole cost. If the Agreement is satisfied after recording, the Town will record a notice that the Agreement has been satisfied at the developer's cost for preparation and recording.

11. Approval of this rezoning does not address the compliance or noncompliance of proposed building elevations with the commercial design standards included in LDC Chapter 34, Article III, Division 7. Development of the subject property must meet the commercial design standards effective at the time of local development order approval.

12. Construction of structures in or over the right-of-way of Old San Carlos Boulevard requires execution of a separate agreement between the developer and the Town Council prior to Town Council's execution of any resolution regarding this CPD. Approval of this rezoning is conceptual and the developer is not entitled to the use of public property by virtue of this rezoning.

13. Approval of this rezoning does not authorize the construction or use of any dwelling units on the subject property except ONE (1) caretaker's dwelling unit. All other living units on the subject property must be constructed and used as guest units in compliance with LDC Chapter 34, Article IV, Division 19. Each unit must have a minimum floor area of 250 square feet and must not exceed a maximum floor area of 1000 square feet. Guest units that are used as accessory group quarters for workforce housing may be occupied without regard for the occupancy time-limitation of LDC Section 34-1801(b)(4). Occupancy of such group quarters is limited to bona fide employees of uses located within the subject property.

14. Regardless of the order of construction phasing, no certificate of compliance will be issued for Phase I (parking structure) unless Phase II (liner building for parking structure) simultaneously receives a certificate of compliance.

15. The fourth (4th) floor and additional twelve (12) feet of building height are limited to one partial fourth floor at the northeasterly corner of Phase II. The floor area of this partial fourth floor is limited to a maximum of 8000 square feet. Building height elsewhere within this CPD zoning district is limited to a maximum of 3 stories and 40 feet.

16. Docks for use by occupants of principal uses on the subject property, docks for lease to non-occupants of principal uses on the subject property, and docks for use by water taxi or water shuttle are limited to the areas within the existing submerged land leases and the submerged land described in **Exhibit B**. These docks are and must remain accessory to the principal use(s) of the subject property. The number of slips within the area of a submerged land lease may not exceed the number authorized by that lease without proper approval. Construction of additional or replacement docks must comply with all applicable requirements of the LDC and all applicable state and federal regulations at the time of permitting. The requested Marina principal use is denied. No live-aboard units are allowed.

B. DEVIATIONS

1. Deviation from LDC Section 34-675(b)(3) and LDC Section 34-1803(b) to allow building height of four (4) stories and 52 feet above base flood elevation, instead of three (3) stories and 40 feet above base flood elevation, in one area limited to 8000 square feet at the northeastern end of the Phase II building, as shown on the building elevations attached hereto as **Exhibit C**. Town Council **APPROVES** deviation #1, as conditioned.
2. Deviation from LDC Section 10-285 to allow minimum connection separation of 28 feet instead of 125 feet for an existing shared access easement connection to Old San Carlos Boulevard, as shown on the MCP. Town Council **APPROVES** deviation #2.
3. Deviation from LDC Section 34-675(c)(1) to allow F.A.R. of 1.891 (including parking garage area providing 234 spaces, exceeding the minimum 134 spaces required for the proposed project), instead of maximum F.A.R. of 1.8. Town Council **APPROVES** deviation #3 as modified to allow maximum F.A.R. of 1.823.
4. Deviation from LDC Section 26-43 and Comp Plan Policy 4-B-10 to allow rezoning for placement of a structure not permitted by LDC Chapter 26 and uses not allowed by Comp Plan Policy 4-B-10 within the Tidal Water FLUM category. Town Council **DOES NOT APPROVE** deviation #4

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, Town Council make the following findings and reach the following conclusions:

A. Regarding the request to zone 0.069± acres of submerged land to CPD:

1. The requested CPD zoning district **does not comply** with the Fort Myers Beach Comprehensive Plan, LDC Chapter 34, and all other applicable town ordinances or codes ;
2. The proposed use or mix of uses **is inappropriate** at the subject location. Sufficient safeguards to the public interest **are not provided** by special conditions to the master concept plan or by other applicable regulations;
3. The proposed use or mix of uses **does not meet** all specific requirements of the Comprehensive Plan that are relevant to the requested planned development, including **Policy 4-B-10** regarding the Tidal Water Future Land Use Map category, **Policy 4-C-2** regarding commercial intensity, **Policy 4-C-3** regarding commercial locations, and **Policy 5-A-5**, which requires the Town to allow no net increase to development capacity island-wide.

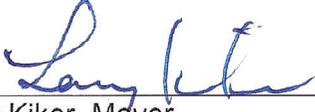
Regarding the request to rezone 1.38± acres of upland from DOWNTOWN to CPD:

1. The requested CPD zoning district, as conditioned, **complies** with the Fort Myers Beach Comprehensive Plan, LDC Chapter 34, and all other applicable town ordinances or codes;
2. The proposed use or mix of uses, as conditioned, **is appropriate** at the subject location;
3. Sufficient safeguards to the public interest **are provided** by the special conditions to the master 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 or mix of uses, as conditioned, **meets** all specific requirements of the Comprehensive Plan that are relevant to the requested planned development, including **Policy 4-B-6** regarding the Pedestrian Commercial Future Land Use Map category, **Policy 7-E-3** regarding location of buildings in pedestrian areas, and **Policies 7-F-1, 7-F-2, 7-F-3, and 7-F-4** regarding the provision of on-island parking facilities, including parking garages.
6. Regarding requested Deviation #1, Deviation #2, and Deviation #3 (if modified as recommended):
 - a. Each deviation **enhances** the achievement of the objectives of the planned development;
 - b. Through each deviation the general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will be** preserved and promoted;
 - 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.
7. Regarding requested Deviation #4:
 - a. The deviation **does not enhance** the achievement of the objectives of the planned development;
 - b. The deviation **will not preserve and promote** the general intent of Land Development Code Chapter 34 to protect the public health, safety, and welfare;
 - c. The deviation **will not operate** to the benefit of the public interest **and may operate to the detriment of the public interest**; and
 - d. The deviation **is inconsistent** with the Fort Myers Beach Comprehensive Plan.

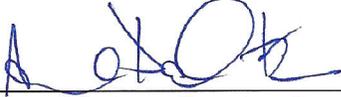
The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Babcock and seconded by Councilmember List and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	<u>aye</u>	Herb Acken, Vice Mayor	<u>aye</u>
Tom Babcock	<u>aye</u>	Jo List	<u>aye</u>
Bob Raymond	<u>nay</u>		

DULY PASSED AND ADOPTED THIS 10th DAY OF AUGUST, 2009, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Larry Kiker, Mayor

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire, Town Attorney

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Exhibit A
FMBDCI2007-0005

A parcel of land lying in Section 24, Township 46 South, Range 23 East, Estero Island, Lee County, Florida, said parcel being further bounded and described as follows:

Commencing at a concrete monument on the northwesterly right-of-way line of San Carlos Boulevard (30.00 feet from the centerline) being the same monument that is shown three feet southeast of the most southeasterly corner of Matanzas View Subdivision as recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N. 25°00'00" E. on said right-of-way line for 125.00 feet to the **Point of Beginning**; thence N. 65°00'00" W. for 119.3 feet; thence N. 25°00'00" E. for 84.60 feet; thence N. 65°00'00" W. for 25.07 feet; thence N. 25°00'00" E. for 75.40 feet; thence N. 65°00'00" W. for 36.00 feet; thence S. 25°00'00" W. for 13.50 feet; thence N. 65°00'00" W. for 19.60 feet to the easterly line of a parcel described in Official Record Book 439, Page 55; thence N. 25°00'00" E. on said easterly line for 46.50 feet; thence S. 65°00'00" E. for 21.66 feet to the westerly line of a parcel described in Official Record Book 1637, Page 1411, for Marina Village at Snug Harbor, a Condominium; thence S. 25°00'00" W. on said westerly line for 6.00 feet; thence S. 65°00'00" E. on the southerly line of said parcel for 147.32 feet; thence N. 25°00'00" E. on the southeasterly line of said parcel for 70.52 feet; thence N. 65°00'00" W. on the northeasterly line of said parcel for 113.77 feet; thence N. 16°09'15" E. for 39.02 feet to the waters of Matanzas Pass at a concrete seawall; thence S. 70°33'16" E. along said waters at said seawall for 151.50 feet to the northwesterly right-of-way line of said San Carlos Boulevard; thence S. 25°00'00" W. on said right-of-way line for 310.74 feet to the **Point of Beginning**.

AND

Beginning at a concrete monument in the northwesterly right-of-way line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown three feet east of from the most easterly corner of Lot 1, Block A, Matanzas View Subdivision, as recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N. 65° W. for 200 feet; thence N. 25° E. parallel to San Carlos Boulevard for 125 feet; thence S. 65° E. for 200 feet to the westerly line of San Carlos Boulevard; thence S. 25° W. for 125 feet to the **Point of Beginning**.

Descriptions based on survey by Charles D. Knight, PLS 6056, dated 12/20/06 and last revised 9/8/08 (BWLK project #38897)

Exhibit B
FMBDCI2007-0005

A submerged tract or parcel of land lying in Matanzas Pass, situated in Section 24, Township 46 South, Range 23 East, Lee County, Florida, said tract or parcel being more particularly described as follows:

Commencing at the northwesterly corner of Block 1, Business Center Subdivision, as recorded in Plat Book 9, Page 10, Public Records of Lee County, Florida; thence N. 25°00'00" E. on the easterly right-of-way line of San Carlos Boulevard for 125.00 feet to the centerline of First Street (a right-of-way 63 feet wide); as shown on the plat of said subdivision; thence N. 65°00'00" W. for 33 feet to the centerline of said San Carlos Boulevard; thence continue N. 65°00'00" W. for 30 feet to the westerly right-of-way line of said San Carlos Boulevard; thence N. 25°00'00" E. for 112.75 feet to a drill hole marking the intersection of the waters edge of a concrete seawall with the westerly right-of-way line of said San Carlos Boulevard; thence N. 70°33'16" W. along the waters edge of said seawall for 139.81 feet to the **Point of Beginning**;

thence N. 70°23'47" W. for 10.32 feet;

thence N. 17°50'44" E. for 31.08 feet;

thence N. 69°26'24" W. for 1.75 feet;

thence N. 17°44'02" E. for 5.19 feet;

thence N. 72°15'58" W. for 30.03 feet;

thence N. 09°32'17" E. for 1.33 feet;

thence N. 68°30'55" W. for 31.85 feet;

thence N. 17°44'02" E. for 10.60 feet;

thence N. 72°15'58" W. for 21.45 feet;

thence N. 21°32'25" E. for 10.02 feet;

thence S. 72°15'57" E. for 46.02 feet;

thence S. 68°27'45" E. for 20.78 feet;

thence S. 72°58'17" E. for 61.54 feet;

thence S. 17°44'02" W. for 23.38 feet;

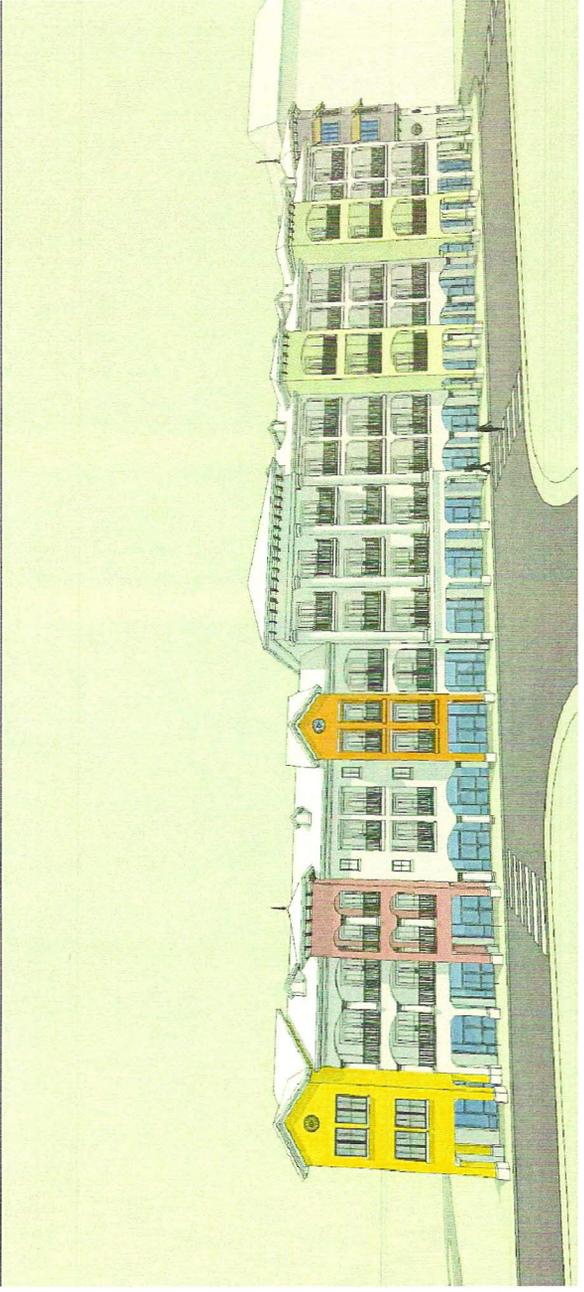
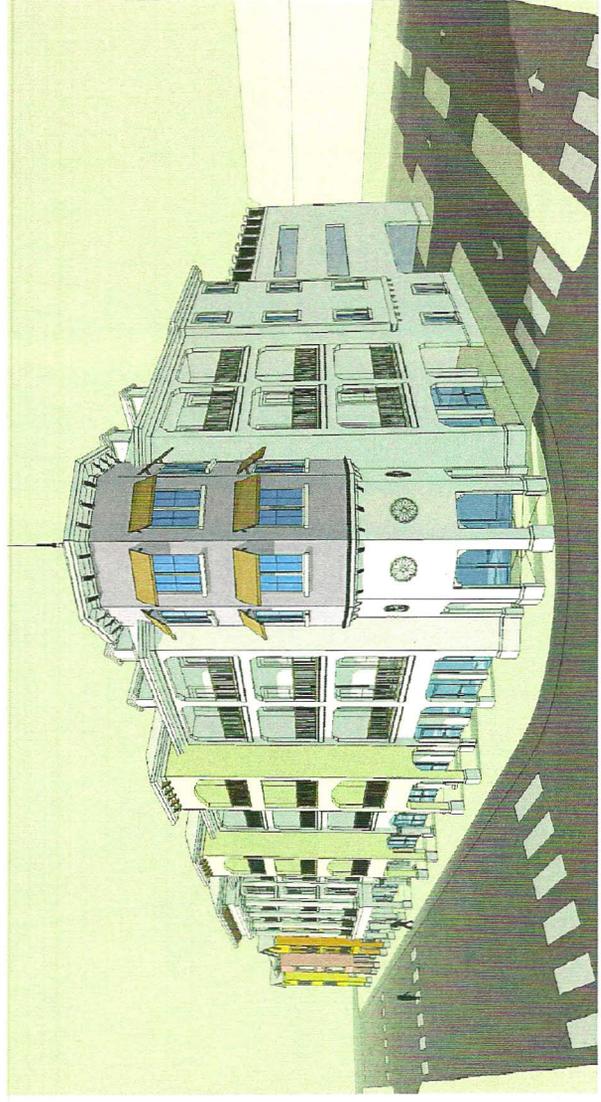
thence N. 72°15'58" W. for 33.50 feet;

thence S. 17°44'02" W. for 36.69 feet to the **Point of Beginning**.

NO.	REVISION	DATE	BY	CHKD
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SNUG HARBOUR

NO.	DATE	DESCRIPTION	BY	APP.

THIS PLAN IS SUBJECT TO ALL APPLICABLE ORDINANCES AND REGULATIONS. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE BUILDING AS SHOWN ON THESE PLANS.

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