

**ORDINANCE 17-03**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A COMMERCIAL PLANNED DEVELOPMENT TO THE CURRENT ZONING MAP FOR A PROPERTY LOCATED AT 2450 ESTERO BOULEVARD FORT MYERS BEACH FROM COMMERCIAL BOULEVARD (CB) TO COMMERCIAL PLANNED DEVELOPMENT (CPD), CONTAINING 0.23 ACRES, MORE OR LESS; PETITION DCI16-0001; APPLICANT HEATHER REAGAN; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.**

**WHEREAS**, Matthew D. Uhle, authorized agent for Heather Reagan, applicant and owner of Mom's Restaurant, filed applications to rezone the property from the CB (Commercial Boulevard) district to CPD (Commercial Planned Development) in order to add restaurants as a permitted use on the site and to accommodate a 1,220 square foot restaurant, on 0.23 acres more or less property, located at 2450 Estero Boulevard in the Town of Fort Myers Beach and; and

**WHEREAS**, the subject property is located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

**WHEREAS**, Applicant has indicated the STRAP number for the subject property is 19-46-24-W3-0120A.0070, and the subject property is more particularly described in Exhibit "A" attached hereto and incorporated herein; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on December 13, 2016; and

**WHEREAS**, at the December 13, 2016 hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

**WHEREAS**, at the December 13, 2016 hearing the LPA recommended approval subject to certain conditions; and

**WHEREAS**, a public hearing on this matter was legally advertised and held before the Town Council on February 6, 2017 at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

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

The Town Council **APPROVES** the request to rezone the subject property to CPD, subject to the deviations and conditions set forth with specificity below.

**DEVIATIONS:**

**Deviation #1**

Deviation from the requirement that build-to lines along Estero Boulevard are to be established at five to ten feet from front property lines, per Section 34-704(a) of the Fort Myers Beach Land Development Code to allow a building setback of 29.3 feet from Estero Boulevard for an existing structure. Approved.

**Deviation #2**

Deviation from the requirement that principal buildings set back a minimum distance of 20 feet from rear property lines, per Section 34-704(b)(1)b. of the Fort Myers Beach Land Development Code, to allow a rear setback of 0.4 feet for an existing deck. Approved.

**Deviation #3**

Deviation from the requirement that off-street parking lots shall be placed in side or rear yards and are not permitted in front yard, per Section 34-706(a) of the Fort Myers Beach Land Development Code, to allow existing parking to remain in the front yard. Approved.

**Deviation #4**

Deviation from the requirement that existing driveways and parking spaces be relocated from Estero Boulevard to other streets and new driveways shall connect only to other streets, per Section 34-706(d) of the Fort Myers Beach Land Development Code, to allow the existing access from Estero Boulevard to remain. Approved.

**Deviation #5**

Deviation from the requirement to provide a total of 14 parking spaces (4 for the office and 10 for the restaurant), per Section 34-2020(d) of the Fort Myers Beach Land Development Code, to provide 5 existing conforming spaces with bumpers and additional nonconforming spaces located on the east, north, and west sides of the site. Approved provided that a total of 14 parking spaces are provided through onsite parking, one bike rack, or an offsite joint parking agreement that a minimum covers January 1<sup>st</sup> to April 1st.

**Deviation #6**

Deviation from the connection separation standards requiring a minimum centerline separation distance of 250 feet between access points along major streets and a minimum centerline separation distance of 125 feet between access points along local streets, per Section 10-285(a), Table 10-1 of the Fort Myers Beach Land Development Code, to allow the existing connection separation distances of 74± feet along Estero Boulevard and 56± feet along Chapel Street. Approved.

**Deviation #7**

Deviation to eliminate the requirement to provide one tree per 3,000 square feet of development area per Section 10-416(a) of the Fort Myers Beach Land Development Code. **WITHDRAWN**

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. Approval of this rezoning does not exempt the subject property from any other provisions of LDC except for those provisions approved as Deviations. Proposed development of the site must be consistent with the Master Concept Plan. Proposed building expansion will require a public hearing amendment to the planned development.
2. The Maximum square footage of the restaurant is limited to 1,220 square feet. The location of the restaurant is limited to that area as depicted on the Master Concept Plan.
3. No outdoor entertainment is approved. To achieve outdoor entertainment requires an amendment to the planned development.
4. The Commercial Planned Development Schedule of Uses is as follows:  
All uses permitted in the CB zoning district;  
Restaurant.
5. The Commercial Planned Development Property Development Regulations are as follows:

Minimum lot width:	99 feet
Minimum lot depth:	100 feet
Minimum lot size:	9,998 square feet
Maximum height:	35 feet
Maximum building coverage:	30 percent
Minimum setback, Estero Blvd.:	29 feet
Minimum setback, Chapel St.:	18 feet
Minimum rear setback:	0.4 feet
Minimum side setback:	13 feet
6. One 4 space bike rack must be installed on the property. Seven parking spaces must be delineated by parking bumpers.
7. Hours of operation for the restaurant are limited to 7 AM to 4 PM.
8. Three thatch palms, a minimum of six feet in height will be installed along the northern property boundary.
9. No COP will be sought or approved for the subject site.

**FINDINGS AND CONCLUSIONS**

Based upon the presentations by the Applicant, Staff, and other interested parties at the hearing, and a review of the application and standards for the planned development zoning approval, the LPA recommends that Town Council reaches the following findings and conclusions:

- a. *Whether there exists an error or ambiguity which must be corrected.*  
There does not exist an error or ambiguity which must be corrected.

- b. *Whether there exist changed or changing conditions which make approval of the request appropriate.* The request is an appropriate way to address a changed condition (the replacement of a permitted use with a restaurant). Staff notes that the subject site is located within the area that is part of phase 1 of the Estero Boulevard refresh project. This project is currently under construction. The improvements include pedestrian and trolley enhancements such as pull outs and wider sidewalks. Staff believes that there exist changed or changing conditions which make approval of the request appropriate.
- c. *The impact of a proposed change on the intent of this chapter.* The application is consistent with the intent of the LDC. The application is consistent with the intent of the existing CB zoning district requirement that new or expanded commercial uses require rezoning as a Commercial Planned Development.
- d. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.* As discussed in the analysis section of the staff report, the requested rezoning is consistent with the Comprehensive Plan, particularly with the provisions within the Boulevard future land use category.
- e. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.* The request meets or exceeds all performance and locational standards for the proposed planned development uses.
- f. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.* Urban services are adequate and available to serve the proposed planned development.
- g. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.* There are no environmentally critical areas or natural resources on the site.
- h. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.* The requested Commercial Planned Development is compatible with existing or planned uses in the area and will not cause damage, hazard, nuisance, or other detriment to persons or property.
- i. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.* The

location of the request does not place an undue burden upon existing transportation or other facilities and services and will be served by streets with the capacity to carry traffic generated by the proposed development.

**CODIFICATION AND SCRIVENER'S ERRORS.**

The Town Council intends that this ordinance will be made part of the Fort Myers Beach Code of Ordinances; and that sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing.

**EFFECTIVE DATE.**

This ordinance becomes effective immediately upon its adoption.

**THE FOREGOING ORDINANCE** was enacted by the Town Council upon a motion by Council Member Shamp and seconded by Council Member Cereceda and, upon being put to a vote, the result was as follows:

Dennis Boback	ABSENT
Joanne Shamp	AYE
Tracey Gore	AYE
Rexann Hosafros	AYE
Anita Cereceda	AYE

**DULY PASSED AND ENACTED** this 21<sup>st</sup> day of February, 2017.

**ATTEST:**

**TOWN OF FORT MYERS BEACH**

By:   
Michelle D. Mayher, Town Clerk

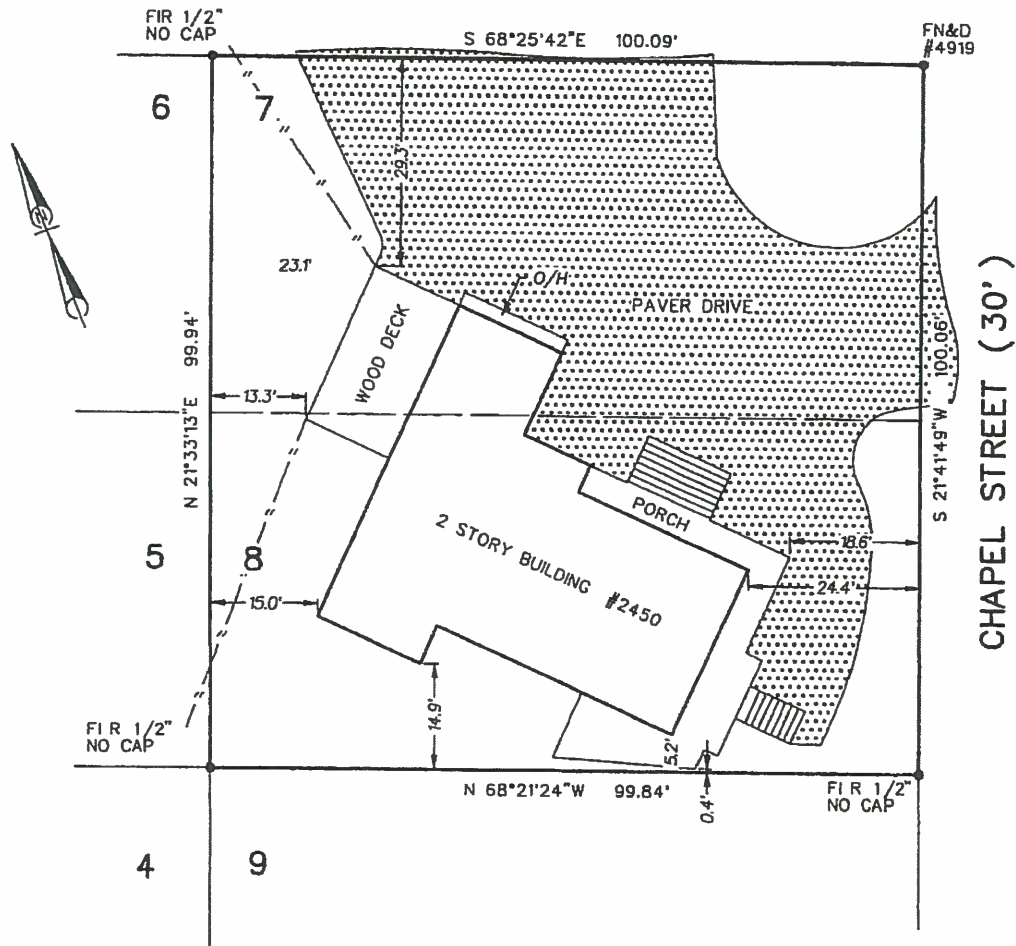
By:   
Dennis C. Boback, Mayor

Approved as to form by:

By:   
Town Attorney

Exhibit A

ESTERO BOULEVARD (50')





BOUNDARY SURVEY

LOTS 7 & 8 BLOCK A  
SEAGRAPE SUBDIVISION  
LEE COUNTY, FLORIDA  
PLAT BOOK 4 PAGE 17

CERTIFIED TO:  
VIP REALTY, FORT MYERS BEACH, LLC

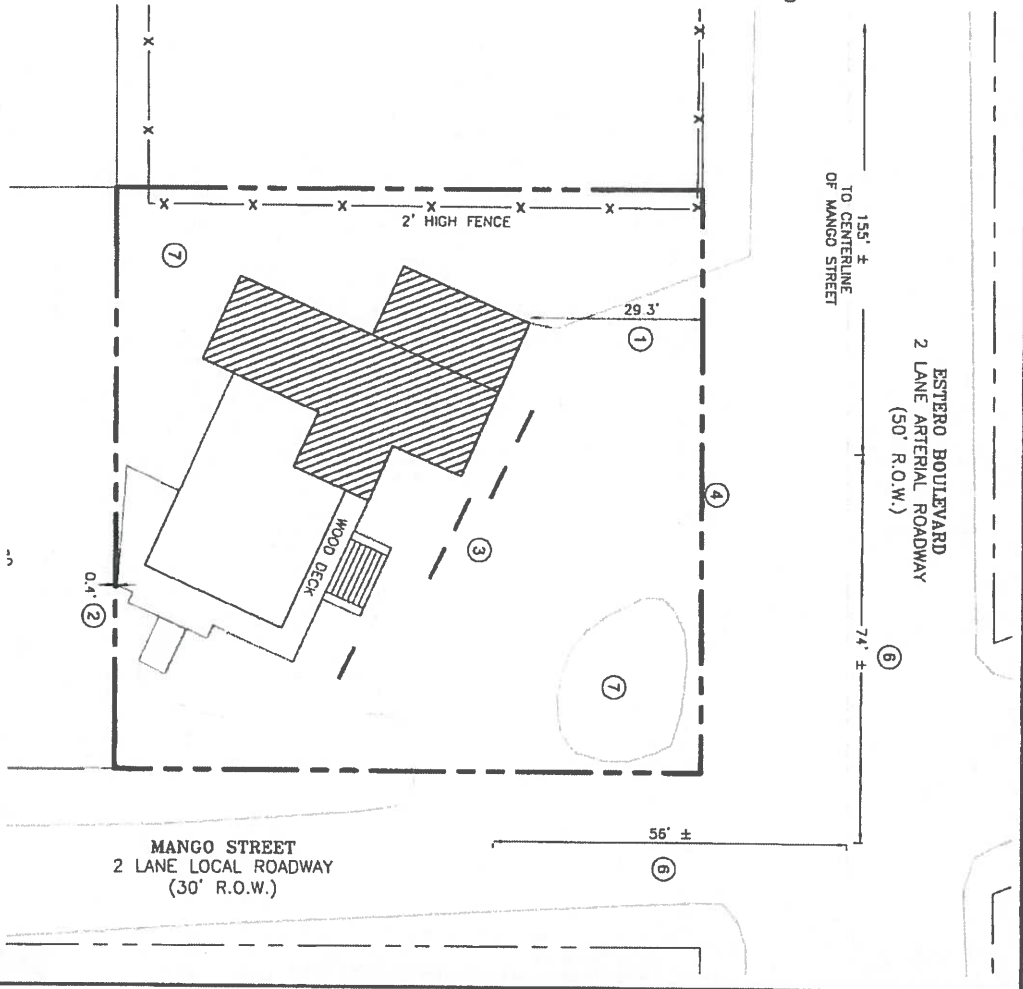
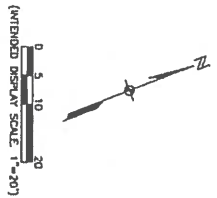
BASIS FOR BEARINGS: ESTERO BOULEVARD - ASSUMED BEARING		SCALE: 0 20	SURVEY DATE: 4/25/14
COMMUNITY NUMBER 120673	MAP & PANEL NUMBER 12071C0554	SUFFIX F	DATE OF FIRM INDEX 8/28/08
LEGEND		FIRM ZONE VE	BASE FLOOD ELEVATION 14
FIR = FOUND IRON ROD FP = FOUND IRON PIPE FDH = FOUND DRILL HOLE FCM = FOUND CONCRETE MONUMENT SR = SET IRON ROD 1/2" LB#7075 PUE = PUBLIC UTILITY EASEMENT PU & DE = PUBLIC UTILITY & DRAINAGE EASEMENT SMO = SET NAIL & DISK LB #7075 FRM = PERMANENT REFERENCE MONUMENT FN&D = FOUND NAIL & DISK POB = POINT OF BEGINNING PE COR = FENCE CORNER CONC = CONCRETE F = FIELD FIELD MEASURED LME = LAKE MAINTENANCE EASEMENT DE = DRAINAGE EASEMENT	+0.0 = EXISTING ELEVATION [ ] = UTILITY RISER [ ] = UTILITY POLE [ ] = FIRE HYDRANT [ ] = CATCH BASIN (P) = PLAT (F) = FIELD (D) = DEED (C) = COMPUTED ---X--- = WIRE FENCE ---W--- = WOOD FENCE NAVD = NORTH AMERICAN VERTICAL DATUM OF 1988	THIS SURVEY IS HEREBY CERTIFIED CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM FROM ENCUMBRANCES. NO UNDERGROUND STRUCTURES HAVE BEEN LOCATED BY THIS SURVEY. ANY REFERENCE TO UNDERGROUND STRUCTURES IF ANY IS APPROXIMATE. UNLESS OTHERWISE SHOWN ALL FIELD MEASURED DIRECTIONS AND DISTANCES ARE IN SUBSTANTIAL AGREEMENT WITH THE DIRECTIONS & DISTANCES OF RECORD FOR THE PARCEL SURVEYED. THIS SURVEY MAY NOT BE USED BY OTHER THAN THE CERTIFIED TO PARTIES. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER. INVALID IF USED IN CONJUNCTION WITH OR TO SUPPORT AN OWNERS AFFIDAVIT AFTER 90 DAYS.	
DAVIS SURVEYING INC. WWW.DAVISLANDSURVEYS.COM		4536 SE 16th PLACE SUITE 3 CAPE CORAL, FLORIDA 33904 TEL(239)549-6454 FAX(239)549-2548 CONTACT@DAVISLANDSURVEYS.COM	
		JOB NUMBER: 14-0614	

**LEGEND**  
 LIMITS OF RESTAURANT ON GROUND FLOOR  
 REQUESTED DEVIATION

**SITE DATA**  
 TOTAL PROJECT AREA: 9,998 S.F.  
 TOTAL BUILDING AREA: 2,966 S.F.  
 PARKING REQUIRED: 14 SPACES  
 PARKING PROVIDED: 5 SPACES  
 MAX. BUILDING HEIGHT: 35 FEET (5)

**PARKING CALCULATIONS**  
 OFFICE: 1,746 S.F. ● 2 SPACES/1,000 S.F. = 3.49 SPACES  
 RESTAURANT: 1,220 S.F. ● 8 SPACES/1,000 S.F. = 9.76 SPACES  
 13.25 SPACES

**NOTE:**  
 NO CHANGES ARE PROPOSED TO THE EXISTING BUILDING OR PARKING AREA THAT WILL CREATE ADDITIONAL REQUIREMENTS FOR BUFFERING OR STORMWATER MANAGEMENT.



2450 Estero Blvd  
 Fort Myers Beach, Florida

**JOHNSON ENGINEERING**

2122 JOHNSON STREET  
 FORT MYERS, FL 33901-1550  
 PHONE: (239) 334-0046  
 FAX: (239) 334-3461  
 E.B. 8642 & L.D. 8642

Master Concept Plan			
DATE	PROJECT NO.	TITLE NO.	SHEET
May 2016	20160086	19-16-24	As Shown Fig 2