

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 12-07
EAGLE EQUITY CAPITAL CPD

WHEREAS, Eagle Equity Capital, LLC, owner of property located at 2301 and 2311 Estero Boulevard and 111 and 121 Mango Street Fort Myers Beach, Florida has requested an amendment to expand the existing Commercial Planned Development (CPD), formerly known as Big John's Board Walk Eatery, to provide required parking on-site for the existing restaurant uses, stormwater management improvements, and landscape buffers as shown on **Exhibit A**; and

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

WHEREAS, the STRAP for the properties are 19-46-24-W3-0110D.0010, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020 and 19-46-24-W3-0120E.0030; and

WHEREAS, the legal description for the properties are Lots 1 and 2, Block D of Beach Estates subdivision, according to the plat thereof recorded in Plat Book 6 Page 68, and Lots 1, 2, and 3, Block E of Seagrape subdivision, according to the plat thereof recorded in Plat Book 4 Page 17 of the Public Records of Lee County, Florida; and

WHEREAS, the Town Council, on December 18, 2006, adopted Resolution 06-30 which rezoned the subject property from Commercial Boulevard (CB) to Commercial Planned Development (CPD); and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 10, 2012 at which time the LPA gave full and complete consideration to the CPD amendment requested by the Applicant, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on May 7, 2012, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2012-005, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2012-005 and the standards for granting planned development rezoning, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for an amendment to the existing CPD, formerly known as Big John's Board Walk Eatery, to provide required parking on-site for the existing restaurant uses, stormwater management improvements, and landscape buffers, with such approval subject to the **8 conditions** and **11 deviations** set forth with specificity below.

CONDITIONS OF APPROVAL:

1. If the principal building on the subject property (2301 parcel) is removed or replaced for any reason, deviations 3, 4, 5, 6, and 7 will become null and void. Any new buildings replaced on the subject property must comply with required setbacks and any other regulations in effect at the time of permitting.
2. Any changes or fracturing of ownership of the four parcels within the subject property will require, at a minimum, an administrative amendment to the Mast Concept Plan to reflect the change in ownership, which will include recorded unified control documentation.
3. The parking lot must be stabilized in accordance with the provisions in Section 34-2017(b)(1).
4. A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees.
5. A Traffic Impact Study (TIS) is not warranted and Town Council hereby overrules the Director's decision to require a TIS. The applicant has provided mitigation for traffic impacts by providing the following: additional on-site parking for tenants and customers, landscape buffers, bicycle racks, extension of the sidewalk along Estero Boulevard in front of the property, elimination of the back out parking in front of the existing building, a reduction in the outdoor dining area to 1,000 square feet, and provision of storm water management improvements. The current restaurant use has demonstrated that it is mainly a pedestrian and bicycle oriented destination and, as a result, the traffic impacts may actually be less than would be expected from a traffic impact study.
6. Bicycle racks shall be provided for a minimum of 8 bicycles.
7. The hours of operation for business use are 6am to 12 midnight. The hours of operation for indoor restaurant uses are 7am to 12 midnight with outdoor seating area limited to between the hours of 7am and 10 pm, seven days a week.
8. No outdoor entertainment is permitted.

APPROVED DEVIATIONS:

Deviation #1

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14-15 foot Type C buffers without a wall, as indicated on the MCP and landscape plan is **APPROVED**.

Deviation #2

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15 foot Type D buffer between parking areas and right-of-way, to allow for a 5 foot Type D buffer between parking areas and right-of-way is **APPROVED**.

Deviation #3

Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building is **APPROVED**.

Deviation #4

Deviation from the requirements of LDC Section 34-707(b)(1)a, which requires a minimum 10 foot street setback to allow for a 2.39 foot street setback from Fairweather Lane to accommodate the existing building is **APPROVED**.

Deviation #5

Deviation from the requirement of LDC Section 34-704(b)(1)b, which requires a minimum 20 foot rear setback, to allow for a two-foot rear setback to accommodate the existing building is **APPROVED**.

Deviation #6

Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal façade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal façade to be 16 feet in length is **APPROVED**.

Deviation #7

Deviation from the requirements of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane is **APPROVED**.

Deviation #8

Deviation from LDC Section 34-2020(d)(2)h, which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 47 required parking spaces) to allow for a 30% reduction from the LDC requirement for a total of 34 provided spaces is **APPROVED**.

Deviation #9

Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface is **APPROVED**.

Deviation #10

Deviation from LDC Section 34-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96± feet of connection separation along Mango Street is **APPROVED**.

Deviation #11

Deviation from LDC Section 10-289(d) which requires an 8 foot wide sidewalk along the property's Estero Boulevard frontage, to allow for a 5 foot wide sidewalk is **APPROVED**.

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 Town Council makes the following findings and reaches the following conclusions:

1. *An error or ambiguity **does** exist which must be corrected.*
Resolution 06-30 did not specifically address parking for the restaurant uses as an on-site condition. This ambiguity in on-site parking requirements is being addressed and corrected with this amendment to the CPD.
2. *Changed or changing conditions **do** exist which make approval of the request appropriate.*
A single property owner has acquired all four parcels, 2301 and 2311 Estero Boulevard and 111 and 121 Mango Street, which comprise the subject property. This change in ownership allows for the required parking on the 2301 parcel to effectively be accommodated on-site. However, in order to permit an increase of commercial uses on parcels within the Boulevard and Mixed Residential FLU categories, a commercial planned development rezoning or amendment is required.
3. *There **will not** be an impact from the proposed change on the intent of Chapter 34.*
The proposed amendment to the CPD will implement the provisions found in Section 34-702, the Commercial Boulevard zoning district, which requires rezoning to Planned Developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code.
4. *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.*
The requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Boulevard and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process.
5. *The request **meets or exceeds** all performance and locational standards set forth for the proposed use.*
The amendment to the CPD for 2301 Estero to include land at 2311 Estero, 111 Mango and 121 Mango meets and exceeds all performance and locational standards for the proposed uses. No new structures or substantial improvements are proposed, therefore the Commercial Design Standards that are found in Section 34-991 and subsequent sections of the LDC do not apply. Furthermore, the amendment is consistent with Policy 4-C-2 which requires that commercial uses in the Boulevard and Mixed Residential FLU be designed to contribute to the pedestrian experience and to provide services for overnight guests and residents.
6. *Urban services **are** available and adequate to serve a proposed land use change.*
The applicant has provided Letters of Availability from Beach Water and Lee County Utilities, demonstrating water and sewer service capacity and availability.
7. *The request **will** protect, conserve, or preserve environmentally critical areas and natural resources.*

As existing commercially developed and vacant lots located on interior parcels of land away from both the Matanzas Pass waterfront and the Gulf of Mexico and beach, the subject property does not include any sensitive and/or environmentally critical lands. However, any lighting visible from the beach and/or included on development order plans will be required to meet all applicable environmental codes including, but not limited to, Sea Turtle lighting requirement as found in LDC Section 14-79.

- 8. The request **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance, or other detriment to persons or property.

The property owner has recently made façade improvements and repairs to the existing building on the subject property. The CPD amendment proposes additional improvements and installations that will have a significant positive impact on the pedestrian experience, resident and visitor alike, and the overall aesthetic appeal of the subject property. Elimination of back out parking, installation of landscape buffers, and opportunity for new business ventures will serve to enhance the immediately surrounding area. The redevelopment of the subject property will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.

- 9. The location of the request **will not** place 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.

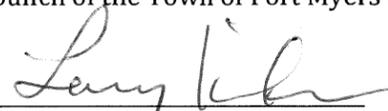
The increase of trips from the prior approval of Resolution 06-30 is 6.43 peak hour trips. However, the site design improvements that accompany the requested CPD amendment demonstrate a significant improvement to bicycle and pedestrian safety and contribute to the overall positive visual appearance along the subject property's Estero Boulevard frontage.

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

Larry Kiker, Mayor	AYE	Bob Raymond, Vice Mayor	AYE
Alan Mandel, Councilmember	AYE	Jo List, Councilmember	AYE
Joe Kosinski Councilmember	ABSTAIN		

DULY PASSED AND ADOPTED THIS 7th day of MAY, 2012.

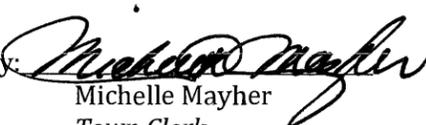
Town Council of the Town of Fort Myers Beach

By: 
Larry Kiker, Mayor

Approved as to legal sufficiency:

By: 
Fowler White Boggs, P.A.
Town Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

PARKING SCHEDULE FOR SITE

AREA DESCRIPTION	SQ. FT.	PERCENTAGE
TOTAL SITE AREA	28,212 SQ. FT.	100%
BUILDING AREA	4,000 SQ. FT.	14%
OPEN SPACE	24,212 SQ. FT.	86%

USE	AREA	PARKING RATIO	SPACES REQ'D
RESTAURANT	4,000 S.F.	8 SPACES : 1,000 S.F.	32
OUTDOOR SEATING	1,000 S.F.	8 SPACES : 1,000 S.F.	8
TOTAL			40

REQUIREMENT	SPACES
TOTAL REQUIRED PARKING	40
HANDICAP SPACES REQUIRED	2
REGULAR PARKING REQUIRED	38
REGULAR PARKING PROVIDED	32
TOTAL H.C. PARKING SPACES PROVIDED (LDC-34-2020)	2
TOTAL PARKING SPACES PROVIDED (INCLUDING H.C.)	34

SITE DEVELOPMENT NOTES

- 1-Site area: 28,212 sq. ft. / 0.65 acres
- 2-Future land use=bullevard and mixed residential
- 3-Current zoning: cpd, cb, rm.
- 4-Proposed zoning cpd
- 5-Maximum proposed intensity is 4,000 sq. ft. of restaurant uses and 1,859 sq. ft. of outdoor seating/
- 6-Potable water to be provided by town of fort Myers beach.
- 7-Sanitary sewer to be provided by lee county utilities.
- 8-Solid waste pickup to be provided by town of fort Myers beach.
- 9-Buffer yards to be provided in accordance with LDC section 10-416, unless subject to deviation request as shown on MCP and landscape plan.
- 10-Site located in firm zone ae.
- 11-Base flood elevation +13.00' NAVD 88.

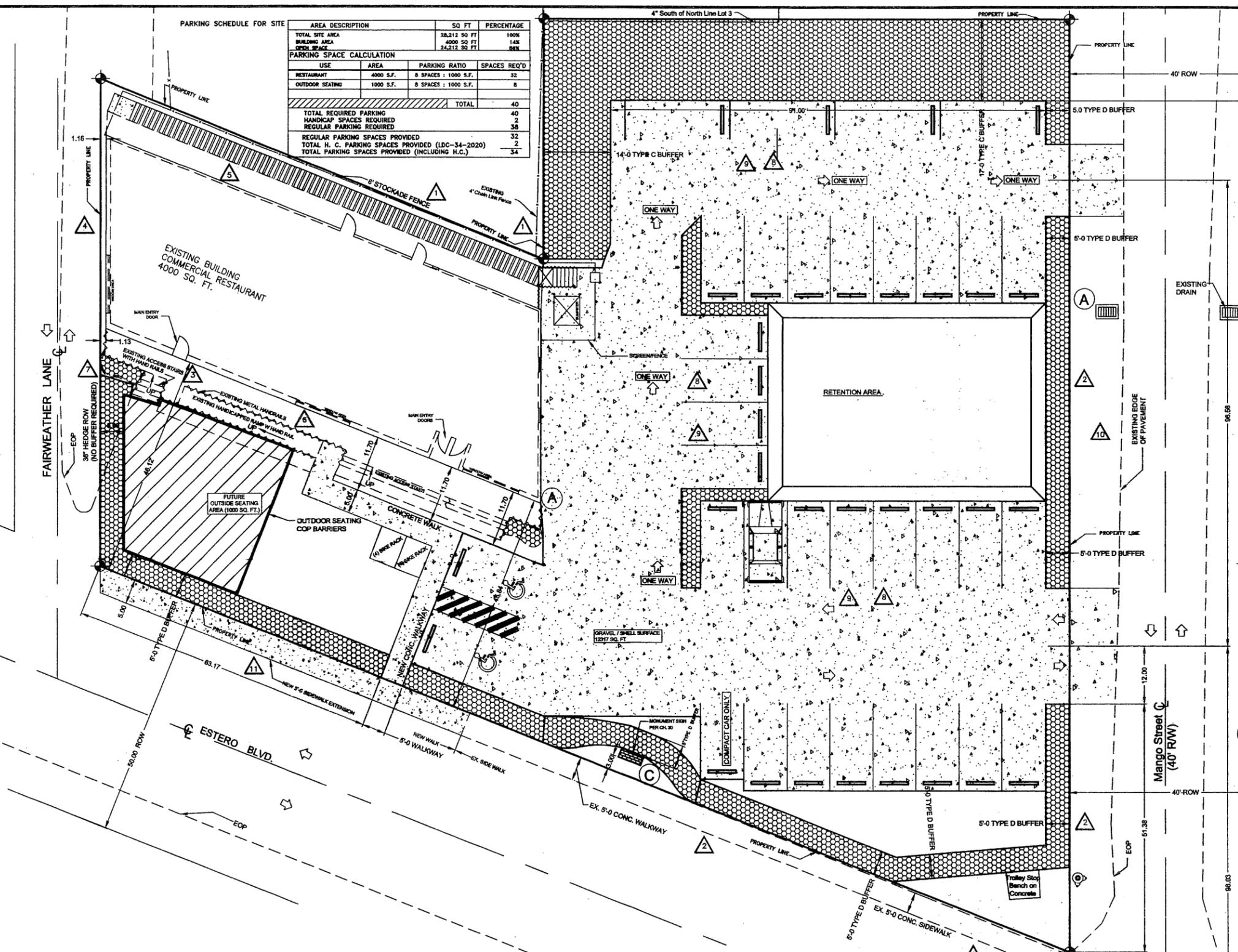
SITE DATA

SITE AREA: 28,212 sq. ft.
 BUILDING SQUARE FOOTAGE: 4,000 sq. ft.
 OUTDOOR SEATING SQUARE FOOTAGE: 1,859 sq. ft.
 MAXIMUM BUILDING HEIGHT: 18 ft. (F.F. 9.33'+)
 MINIMUM BUILDING SETBACKS:
 ESTERO BOULEVARD: 45 ft.
 FAIRWEATHER LANE: 2.38 ft.
 MANGO STREET: 110.5 ft.
 REAR: 2 ft.

SITE ADDRESS: 2301 ESTERO BOULEVARD
 FORT MYERS BEACH, FL.

SITE DEVIATION NOTES (B) (D)

- Exhibit D-1-F Schedule of Deviations & Justification
- 1-Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an (8) foot high solid stockade fence and 15-foot Type "C" buffers without a wall, as indicated on the MCP and landscape plan.
 - 2-Deviation from the requirements of LDC Section 10-416(d)(2) and LCD Table 10-8, which requires a 15-foot Type "D" buffer between parking areas and rights-of-way, to allow for a 5-foot type "D" buffer between parking areas and rights-of-way
 - 3-Deviation from the requirement of LDC Section 34-704(a) which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 45 feet to accommodate the existing building.
 - 4-Deviation from the requirement of LDC Section 34-704(b)(1)a., which requires a minimum 10-foot street setback, to allow for a 2.39 street setback from Fairweather Lane to accommodate the existing building.
 - 5-Deviation from the requirement of LDC Section 34-704(b)(1)b., which requires a minimum 20-foot rear setback, to allow for a two-foot rear setback to accommodate the existing building.
 - 6-Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal facade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal facade to be 18 feet in length.
 - 7-Deviation from the requirement of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fair-weather Lane.
 - 8-Deviation from LDC Section 34-2020(d)(2)h., which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area, (for a total of 40 required spaces) to allow for a 15% reduction from the LDC requirement, (for a total of 34 provided spaces)
 - 9-Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.
 - 10-Deviation from LDC Section 10-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96+/- feet of connection separation along Mango Street.
 - 11-Deviation from LDC 10-289(d) which requires an 8 foot wide sidewalk along the Property's Estero Blvd. frontage to allow a 5'-0 sidewalk.



LOCATION	BUFFER TYPE	# TREES (1)	# SHRUBS (1)	BUFFER WIDTH (2)
NORTH	C	110 LF/100 LF X 5 = 6 TREES	110 LF/100 LF X 18 = 20 SHRUBS	15'
NORTHWEST	C	40 LF/100 LF X 5 = 2 TREES	40 LF/100 LF X 18 = 7 SHRUBS	14'
SOUTH (ESTERO BLVD.)	D	218 LF/100 LF X 5 = 11 TREES	36" HEDGEROW	5'
EAST (MANGO ST.)	D	193 LF/100 LF X 5 = 10 TREES	36" HEDGEROW	5'
WEST (FAIRWEATHER LN)	NO BUFFER REQUIRED	N/A	36" HEDGEROW	5'

- (1) PER 100 LINEAR FEET
- (2) SEE DEVIATIONS
- (3) AT LEAST 75% OF TREES AND 50% OF SHRUBS MUST BE NATIVE FLORIDA SPECIES.

ENGINEER OF RECORD:
 Name: JCESPH C. KOSINSKI, P.E.
 Address: 165 GulfView Ave.
 City & State: Ft. Myers, Florida 33831
 Phone: 239 872-2179
 FLORIDA REGISTRATION NO. _____
 Signed: _____
 DATE: _____

EXHIBIT A

Town of Fort Myers Beach
 APR 25 2012
 Received Community Devel.

ORIGINAL

REV#	DATE	BY	DESCRIPTION
①	4/11/12	DK	REVISED PER LPA APPROVALS
②	3/13/12	DK	REVISED MONUMENT SIGN LOCATION
③	3/13/12	DK	REVISED PER ZONE SUBMITTAL COMMENTS
④	3/6/12	DK	REMOVE S. STAIRWAY & E. SWAL

EAGLE EQUITY CAPITAL LLC
MASTER CONCEPT PLAN
 FORT MYERS BEACH, FLORIDA

BARBON CONSULTING SERVICES
 FORT MYERS, FLORIDA
 239-433-5602

SCALE	DWN. BY	DATE	APPROVED	DRAWING No.	REV#
AS SHOWN	D.K.	2/20/12	BH	11-301-03	D