

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 13-23  
DCI2013-0002 Pink Shell CPD Amendment

WHEREAS, Beverly Grady, Esq., authorized agent for New Pink Shell, LLC, owner of property located at 171-191, 200, 251-281 & 275/322 Estero Boulevard Fort Myers Beach, Florida has requested an amendment to the existing CPD, known as the Pink Shell CPD, to add 'Recreation, Commercial with membership' to the approved schedule of uses and allow the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members; and

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

WHEREAS, the STRAP numbers are 24-46-23-W1-00700.0320, 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0290, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.037A; and

WHEREAS, the legal description for the subject property is attached as *Exhibit A*; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 17, 2013; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, 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 34-212.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on October 21, 2013, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-013, 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 34-212.

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 2013-013 and the standards for granting variances, 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 an existing Commercial Planned Development to add 'Recreation, Commercial with membership' to the approved schedule of uses and enable the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members subject to the following conditions:

**CONDITIONS OF APPROVAL**

1. *The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment.*
2. *All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit B.*

3. *The definition of 'Recreational, Commercial with membership' will be as follows: Includes but not limited to resort accessory uses, subordinate commercial uses including food and beverage services, personal services, fitness facility, pools, beach access and docks.*
4. *The approved schedule of uses are limited to those detailed on the attached Exhibit G*
5. *The total number of commercial memberships is not to exceed 350.*

### **APPROVED DEVIATIONS**

All previously approved deviations have been consolidated into one document, attached as *Exhibit F*.

### **FINDINGS AND CONCLUSIONS**

Based upon an analysis of the application and the standards for approval of a planned development rezoning found in Section 34-85 and 34-216 of the LDC, LPA recommends that the Town Council make the following findings and conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*  
No error or ambiguity exists on the subject property; the application is to request amendments to the approved schedule of uses to allow 'Recreation, Commercial with membership' and to allow parking for employees, guests and members on Lots 38 & 39. (see *Exhibit B* for the Master Concept Plan). **APPROVE**
2. *Whether there exist changed or changing conditions which make approval of the request appropriate.*  
The applicant is requesting a change in the existing schedule of uses for the Pink Shell Resort. This request change the conditions of the approved CPD requires an amendment to the CPD. The applicant suggests that additions of 'Recreation, Commercial with membership' and modifications to parking on Lots 38 & 39 will not result in any negative impacts and will operate essentially in the same manner as currently exists on the subject property. However, Staff remains concerned about the undefined number of memberships and the total number of parking spaces provided. **APPROVE**
3. *The impact of a proposed change on the intent of this chapter.*  
The proposed amendment to the CPD will implement the provisions found in Section 34-214, procedure for amending planned developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code. **APPROVE**
4. *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 this report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Recreation and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process. **APPROVE**
5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*  
The request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' ad to modify allowable parking on Lots 38 & 39 generally meets all performance and locational standards for the proposed uses. No new structures or

substantial improvements are proposed, nor are any deviations from LDC regulations requested. **APPROVE**

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

The applicant has indicated that urban services are available and adequate to serve the proposed changes. **APPROVE**

7. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request to amend the schedule of uses and modify parking will have no impact on environmentally critical areas or natural resources. However, any lighting visible from the beach and/or included on any future plans 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. **APPROVE**

8. *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 request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' and to modify allowable parking on Lots 38 & 39 is compatible with surrounding uses. The applicant is not requesting any new uses just the ability to offer the recreation facilities already existing on the subject property on a commercial membership level. This is compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property. **APPROVE**

9. *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 existing trolley stop and sidewalk from the resort to the trolley stop is consistent with the standards set forth in LDC Section 10-442. **APPROVE**

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

Alan Mandel, Mayor    AYE  
Jo List                    AYE  
Dan Andre                AYE

Joe Kosinski, Vice Mayor    AYE  
Bob Raymond                AYE

DULY PASSED AND ADOPTED THIS **21st** day of **OCTOBER, 2013**.

By: Alan Mandel  
Alan Mandel, Mayor

Approved as to legal sufficiency:

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

ATTEST:

By: Michelle Mayher  
Michelle Mayher  
Town Clerk

# EXHIBIT A

## LEGAL DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 2,3,4,5,6,8,9 AND 10 OF GULFSHORE, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA;

LOTS 34,35, AND 36 AND NORTHWESTERLY 25 FEET OF LOT 33 OF UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 29 THROUGH 32 AND THE NORTHWEST 1/2 OF LOT 28, OF BLOCK "D", UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. LOTS 33,34,35,36,38 AND 39, BLOCK "D", ISLAND SHORES CLUB SECTION, A SUBDIVISION, AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 37 THROUGH 42 OF ISLAND SHORES CLUB SECTION, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LESS ANY PORTION THEREOF LYING BELOW THE MEAN HIGH TIDE LINE OF THE MANTANZAS PASS AND THE EROSION CONTROL LINE OF THE GULF OF MEXICO.

## LESS AND EXCEPT THE FOLLOWING:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA ALSO BEING PART OF LOTS 2,3,4,8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88 ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 233.95 FEET TO A POINT ON THE EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGE 25 OF THE PUBLIC RECORDS OF LEE, COUNTY, FLORIDA; THENCE S.34°48'21"E. ALONG SAID EROSION CONTROL LINE FOR 40.76 FEET; THENCE S.37°26'30"E. FOR 108.35 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 2; THENCE N.47°52'35"E. ALONG SAID SOUTHEASTERLY LINE FOR 351.39 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPT SANIBEL VIEW VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 3559, PAGE 222 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND WHITE SAND VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 4203, PAGE 2100 OF SAID PUBLIC RECORDS.

**KEY:**

- FUTURE WALKWAY-BEACH ACCESS EASEMENT
- PROPOSED SECURITY GATES

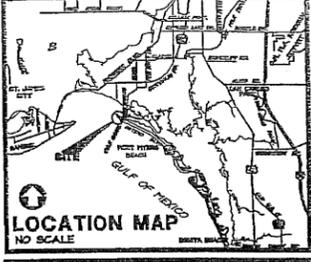


EXHIBIT B  
1 of 2

**CPD NOTES (GULFSIDE):**  
ZONING - C F D

- PHASE I "PINK SHELL ISLAND SHORES" - NOT PART OF PINK SHELL RESORT
- PHASE II AND IV OF PUD PLAN (COMBINED "SANIBEL VIEW" EXISTING SIX (6) STORY, SIXTY (60) UNITS) NOT PART OF THIS APPLICATION
- PHASE III ONE SEVEN (7) STORY STRUCTURE OVER PARKING WHICH WERE BUILT AS ESTERO ISLAND BEACH VILAS WITH 42 UNITS AND JANUARY 10, 2000 AND JUNE 25, 2001 AMENDMENTS TO PUD, ONE NINE (9) STORY STRUCTURE OVER SERVICE LEVEL AND GROUND LEVEL APPROVED WITH RESORT USES AND 52 UNITS
- 2010 REVISIONS:
  - REVISION TO WHITE SANDS CPD AND CAPINA VILAS CPD TO PERMIT RELOCATION OF PEDESTRIAN WALKWAY ACCESS EXISTENT FROM THE VIEW CORRIDOR AS DEPICTED ON THE MASTER CONCEPT PLAN
  - VIEW CORRIDOR (WITHIN THE THIRTY-SIX FEET (36') BUILDING SEPARATION AREA TO BE SHARED BY WHITE SANDS PARCEL AND CAPINA VILAS PARCEL). THE VIEW CORRIDOR SHALL BE A MINIMUM OF TWENTY FEET (20') IN WIDTH WITH LANDSCAPING FURNISH TO A RECORDED INSTRUMENT WITH THE TOWN OF FORT MYERS BEACH AS THE BENEFICIARY
  - AS PART OF THE RELOCATION OF THE WALKWAY BEACH ACCESS EASEMENT THE RELOCATED PEDESTRIAN WALKWAY WILL INCLUDE A DUNE CROSSOVER
  - EMPLOYEE HOUSING APPROVAL

NOTATION: FROM LIC SECTIONS 10-415 AND 416 TO ALLOW OPEN SPACE REDUCTION AND BUFFER AS INDICATED ON LANDSCAPE PLAN BY BELLANO HERBERT & CO. STAMPED REVISION AUGUST 1, 2007 AND DEPICTED ON EXHIBIT "C" TO REVISION.

2013 REVISION:

- ADD USE RECREATION FACILITIES, COMMERCIAL MEMBERSHIP

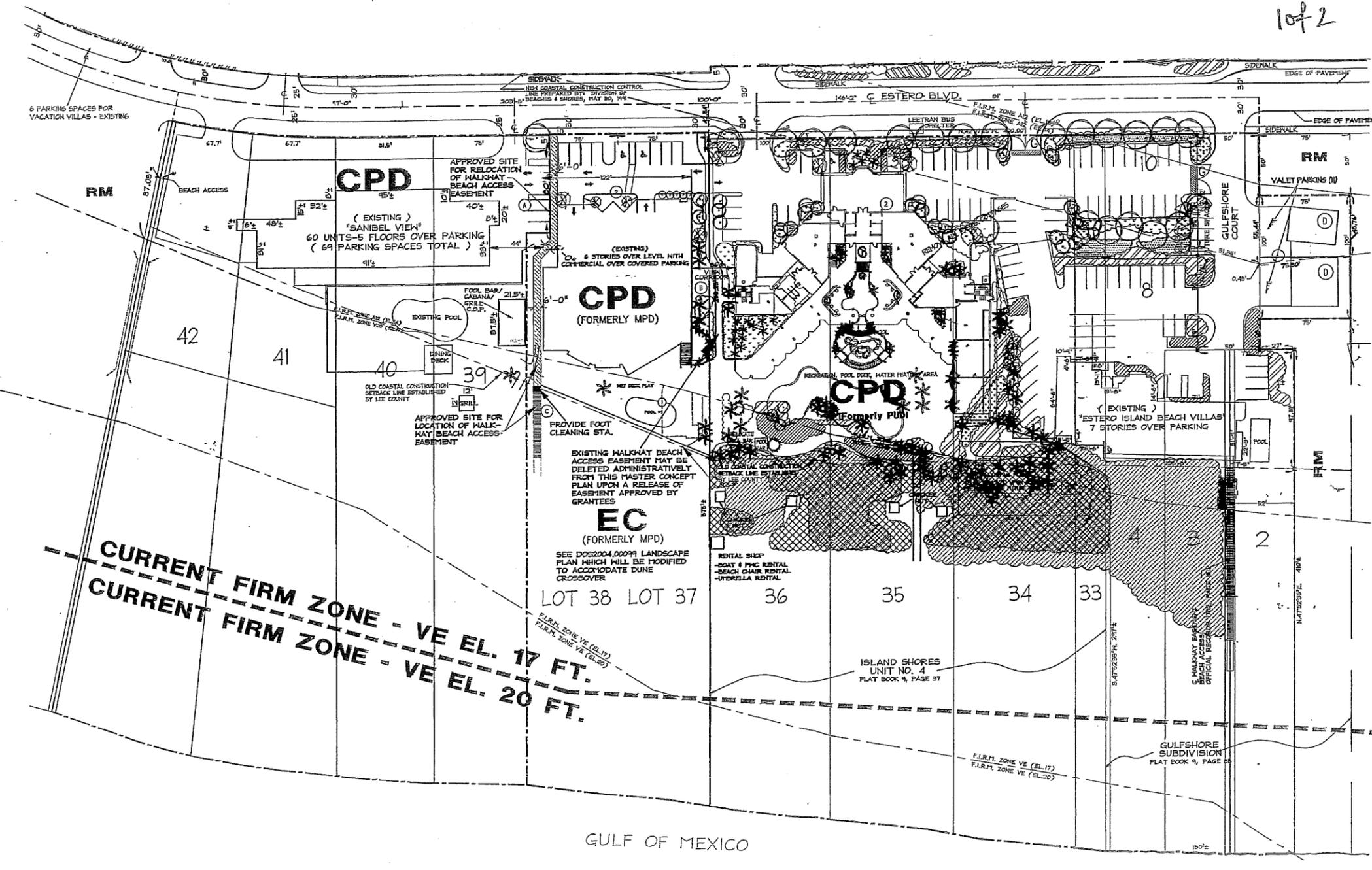
**PARKING COUNT**

EXISTING

- ALL PREVIOUS PHASES HAVE INDIVIDUALLY SATISFIED THEIR PARKING REQUIREMENTS
- EXISTING PARKING:
  - GULFSIDE = 94 SPACES
  - BAYSIDE (VALET) = 126 SPACES
  - SUB TOTAL = 220 SPACES
- LOTS 38 AND 31 = 41 SPACES
- TOTAL = 261 SPACES

APPROVED MCP 03/25/10  
 REVISED 07/25/13  
 REVISED 08/27/13

SCALE: 1" = 40'



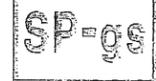
CURRENT FIRM ZONE - VE EL. 17 FT.  
 CURRENT FIRM ZONE - VE EL. 20 FT.

GULF OF MEXICO

Gora McGahey Architects, Inc.  
 43 Barkley Circle Suite 202  
 Fort Myers, Florida 33907  
 941-275-0235 Fax 941-275-7123

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

JOB NO. 98011



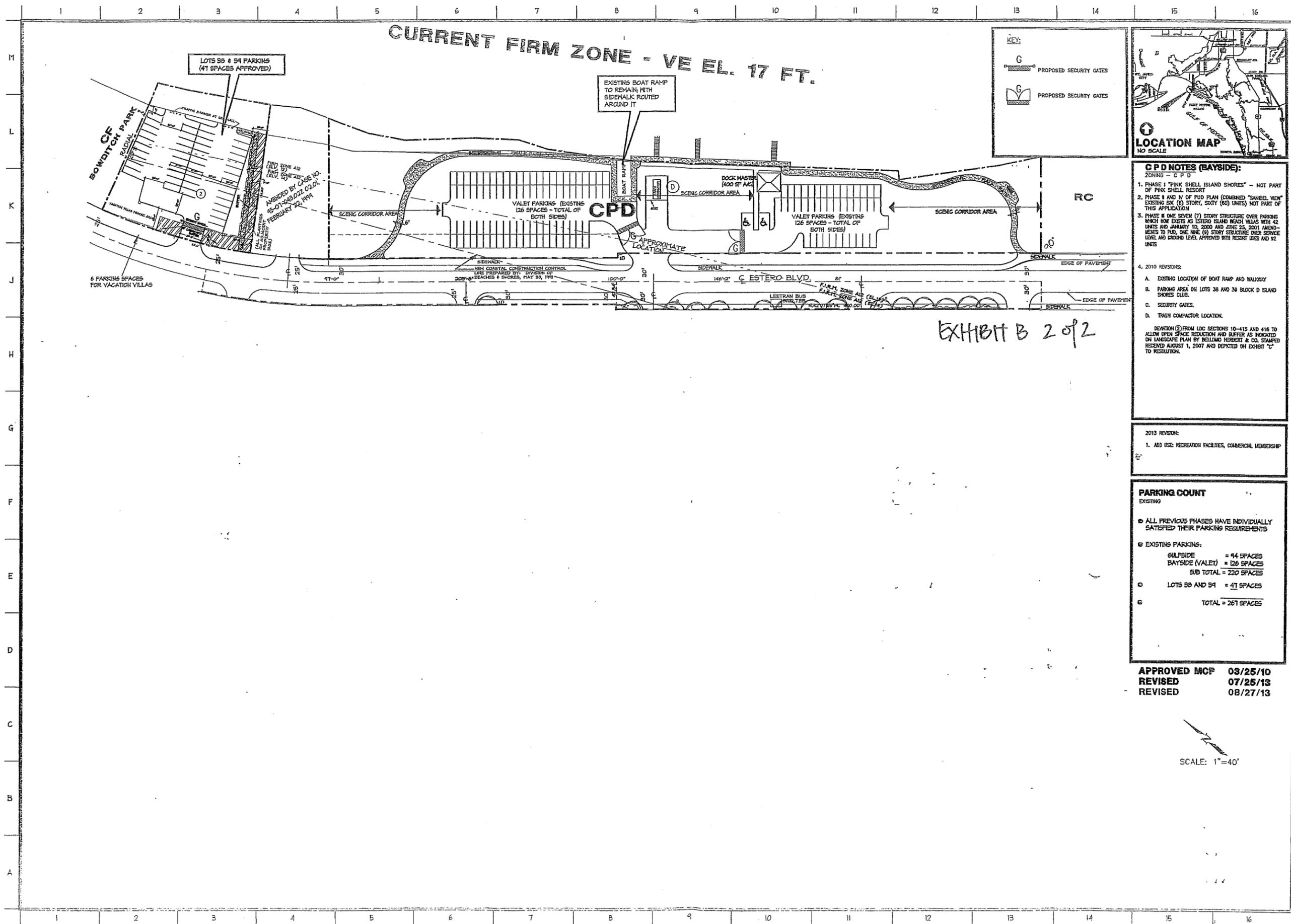
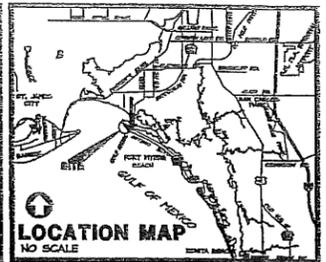


EXHIBIT B 2 of 2



**CPD NOTES (BAYSIDE):**  
 ZONING - C P D

1. PHASE I "PINK SHELL ISLAND SHORES" - NOT PART OF PINK SHELL RESORT
2. PHASE I AND II OF PUD PLAN (COMBINED "DANIEL VIEW" EXISTING 5K (5) STORY, SIXTY (60) UNITS) NOT PART OF THIS APPLICATION
3. PHASE II ONE SEVEN (7) STORY STRUCTURE OVER PARKING WHICH NOW EXISTS AS ESTERO ISLAND BEACH VILLAS WITH 42 UNITS AND JANUARY 10, 2000 AND JUNE 25, 2001 AMENDMENTS TO PUD, ONE NINE (9) STORY STRUCTURE OVER SERVICE LEVEL AND GROUND LEVEL APPROVED WITH RESUB LDCS AND 92 UNITS
4. 2010 REVISIONS:
  - A. EXISTING LOCATION OF BOAT RAMP AND WALKWAY
  - B. PARKING AREA ON LOTS 38 AND 39 BLOCK D ISLAND SHORES CLUB.
  - C. SECURITY GATES.
  - D. TRASH COMPACTOR LOCATION.

DEVIATION (D) FROM LDC SECTIONS 10-415 AND 416 TO ALLOW OPEN SPACE REDUCTION AND BUFFER AS INDICATED ON LANDSCAPE PLAN BY RICHARD HERBERT & CO. STAMPED RECEIVED AUGUST 1, 2007 AND DEPICTED ON EXHIBIT "C" TO RESOLUTION.

2013 REVISION:  
 1. ADD USES RECREATION FACILITIES, COMMERCIAL LEISURESHIP

**PARKING COUNT**  
 EXISTING

- ALL PREVIOUS PHASES HAVE INDIVIDUALLY SATISFIED THEIR PARKING REQUIREMENTS
- EXISTING PARKING:
 

GULFSIDE	= 44 SPACES
BAYSIDE (VALET)	= 126 SPACES
SUB TOTAL	= 220 SPACES
- LOTS 58 AND 59 = 41 SPACES
- TOTAL = 261 SPACES

APPROVED MCP 03/25/10  
 REVISED 07/26/13  
 REVISED 08/27/13

SCALE: 1"=40'

43 Barkley Circle Suite 202  
 Fort Myers, Florida 33907  
 941-275-0225 Fax 941-275-7123

**Gora McCahey ASSOCIATES IN ARCHITECTURE**

**PINK SHELL C P D BAYSIDE MASTER CONCEPT PLAN**

JOB NO. 98011

Deviations – 2001 Captiva Villas – Resolution 01-26

1. Deviation from LDC Section 34-940 which requires Mixed Use Planned Developments to have at least 300 or more dwelling units and either 100,000 square feet of commercial floor area or be located on a parcel of 10 or more acres, to allow the requested intensities.
2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one-half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 to allow hotel units with a maximum of 750 square feet and 1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 square feet. In no case will the total area of the 43 units exceed 28,219 square feet.
4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all weather surface, to allow an unpaved surface (no parking lots with the following conditions:
  1. The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.
  2. The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
  3. Parking stripes will not be required on the alternative surface, however, parking bumpers must be used to identify the required number of parking spaces.

B. DEVIATIONS – 2010 Gulfside – Resolution 10-05

## Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The

remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". Town Council APPROVES Deviation #2.

B. DEVIATIONS – 2010 Bayside – Resolution 10-06

Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-a-way for access to the proposed trash compacter. Town Council APPROVES deviation #2 as modified.

EXHIBIT 9

SCHEDULE OF USES  
(Underling depicts new uses)

**Residential**

- Principal:
  - Dwelling unit, single-family (one existing cottage only)
  - Dwelling unit, two family (on existing cottage only)
  - Dwelling unit, multi-family (92 existing units in White Sands Villas only)
  - Group Quarters (See condition 6 Resolution 10-05)
- Accessory:
  - Residential accessory uses

**Lodging**

- Principal:
  - Hotel/motel (43 existing guest units in Captiva Villas only)
  - Rental of any permitted dwelling unit for periods of one day or longer
  - Resort
  - Timeshare units
- Accessory:
  - Resort accessory uses, including:
    - Parking
    - Rental of beach furniture and cabanas
    - Boat rental
    - Charter and tour boats
    - Personal watercraft operations office
    - Parasailing operations office
    - Sailing office
    - Docks for use by water taxi or water shuttle (See Condition 7 Resolution 10-06)
    - Meeting space
    - Kids camp and crafts
    - Signs
    - Business center
  - Subordinate commercial uses

**Office**

- Principal:
  - NONE
- Accessory:
  - Administrative Office
  - Home occupation (no outside help)
  - Commercial accessory uses

**Retail**

- Principal:
  - Recreational facilities – commercial, in conjunction with a membership\*
  - Subordinate commercial uses including restaurant, personal services, retail store (small)
- Accessory:
  - ATM
  - On-premises and package sale for off-premise consumption of alcoholic beverages

**Marine**

- Principal:
  - NONE
- Accessory:
  - Dock (for lease to non-occupants of the principal use)
  - Dock (for use by resort occupants)

**Civic**

- Principal:
  - Beach or bay access
  - Essential services
  - Essential service equipment
  - Park, neighborhood