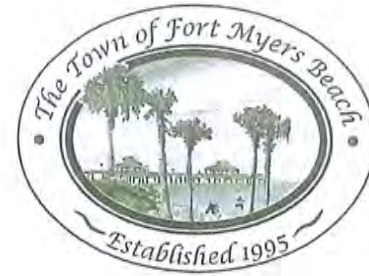


MEMORANDUM



To: Hank Zuba, Chair, Local Planning Agency
Local Planning Agency members

From: Leslee Dulmer, Zoning Coordinator

CC: Walter Fluegel, Community Development Director

Date: December 30, 2013

Re: 440 Old San Carlos Blvd – REZ2013-0001, SEZ2013-0005, VAR2013-0006

At the November 12, 2013 Local Planning Agency (LPA) meeting, the property owner and applicant for cases REZ2013-0001, SEZ2013-0005 and VAR2013-0006 for property located at 440 Old San Carlos Boulevard requested a continuance to a date certain of the January 14, 2013 LPA meeting. The purpose of the continuance request was to ensure that the application and submittals by the applicant were complete. LPA granted the request with the understanding that the applicant would provide any additional information to Staff in sufficient time to review same prior to the LPA meeting.

This memo will serve as Staff's review of any *NEW* requests and any *NEW* material submitted by the applicant after the last LPA meeting pertaining to the cases listed above. Staff has, however, also included a brief summary of the previous requests. Please refer to the packet materials from the November LPA meeting for the original submittal documents.

Please note, Staff received the attached documentation via email on December 16, 2013. There was no organization to the submittal and Staff has struggled in the very short period of time remaining (before packets were due to members) to understand the information supplied and what exactly the applicant is requesting. Staff has, therefore, attempted to ascertain what is being requested solely based on the documentation provided by the applicant. The pages following this memo are the documents as supplied by the applicant.

****Please note: on January 7, 2014 Staff received via email a summarizing document from the applicant (attached immediately following this memo). However, due to the lateness of submittal and LPA packet deadlines, Staff did not have time to revise the following memo.****

REZ2013-0001

Original request

A request to rezone four parcels from the Commercial Planned Development zoning to the DOWNTOWN zoning district.

Additional request(s)

The applicant did not include any changes to this request.

Recommendation

Staff recommends **APPROVAL** of the requested rezoning from Commercial Planned Development (CPD) to DOWNTOWN.

SEZ2013-0005

Original request

A request for a special exception to include Retail Store, large, as defined in LDC Chapter 34 as gross floor area larger than 5,000 square feet, as a permitted use.

Additional request

A request for a special exception to allow a parking lot, shared and permanent.

Staff Review

The applicant added this second special exception request to bring an existing use into compliance—a commercial parking that would otherwise continue as an existing non-conforming use on the subject property. As is evident by the extensive list of requests on the subject property, the property owner is attempting to limit the number of non-conforming uses on the subject property. The applicant provides little justification for the requested use other than the assertion that parking is an appropriate use.

The use of a permanent commercial parking lot is compatible and one that furthers the intent of the 'park once' philosophy of the Downtown Core Area. However, by rezoning from CPD to DOWNTOWN, the parking uses must comply with Section 34-676(b) which does not allow parking lots in front or side yards (see *Exhibit E*). In addition, Table 10-8 in Chapter 10 of the LDC requires a 15' Type D Buffer between all parking lots and rights-of-way. Without the special exception, the proposed rezoning will render the parking lot nonconforming and so they have included the requested special exception uses (addressed by the application for special exception, case SEZ2013-0005) and for location and buffers (addressed by application of a variance, case VAR2013-0006).

Recommendation

Staff recommends **APPROVAL** of both the request to include Retail Store, large, as defined in LDC Chapter 34 with gross floor area larger than 5,000 square feet, *and* the request for a special exception to allow parking lot, shared and permanent as permitted uses.

VAR2013-0006

Original request

A variance request from:

1. Section 34-676(b) parking lot location to permit off-street parking in the front and side yard as depicted on the site plan *Exhibit E*
2. A variance from Table 10-8 from a Type D buffer for Old San Carlos and from Third Street to existing conditions

Additional requests

Additional variance requests from:

3. Section 10-416(d) requiring buffer between parking and ROW to allow zero buffer

4. Section 10-416(d) requiring a type C/F buffer along rear property line to allow existing six (6') foot fence along rear property line
5. Section 34-677(b)(3) requiring a buffer between off street parking and a ROW to allow zero buffer
6. Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'
7. Section 34-622 (b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in sketch

Staff Review

In all the resubmittal information provided by the applicant there was an overriding lack of narrative, justification, and documented analysis of each request against the criteria for decisions making on variances found in Section 34-87. This lack of information compounded Staff's difficulty in analyzing the requests and resulted in many of the final recommendations of 'denial.'

From Staff's estimation, the additional variances numbered 3, 4, and 5 are essentially to allow the existing conditions of the subject property to remain and not be rendered nonconforming by the act of rezoning the property from CPD to DOWNTOWN. Upon initial review, it appears that granting the requests to maintain a status quo condition is a reasonable action. However, one must remember that variance approvals run with the land – meaning that any approvals granted to permit and allow for existing conditions will remain in effect at the time of redevelopment. Furthermore, at the time of redevelopment the Town has its best opportunity to bring those properties inconsistent with the Land Development Code and the Comprehensive Plan into compliance.

Staff does agree with the applicant, however, that the size and scope of the buffers required (15' for a ROW buffer and 15' with a wall or 30' without a wall between the subject property and the adjacent residential use) by these code sections could be considered excessive and inconsistent with the intent of a vibrant, mixed use downtown core area encouraged by the Comprehensive Plan. As stated in the Staff report that was written in preparation for the November LPA hearing, Staff understands that a 15' foot buffer on an existing site not currently under development order may prove to be a burdensome requirement. However, the code does encourage landscape buffers as a way to shield parking lots from view and the pedestrian experience (see also Section 34-2022(c)). Staff would suggest that conditioning an approval to allow for a reduced size and scope of buffering would be a compromise equally agreeable to both the Town and the applicant. Therefore Staff suggests, as an alternative, that instead of a 15' wide buffer, the applicant will install a 5' buffer with the same number of shrubs and trees. This would be consistent with buffer deviations approved at 2301 Estero and similar to the planting requirements from the Seasonal Parking lot provisions.

Variance #6 is a request to allow parking space and parking aisle dimensions that are smaller and narrower than code allows. Currently Section 34-2016 defines a minimum parking space as 8.5'x18' or 8.5'x20' and parking aisles between 11' to 22' wide depending on the specific layout of the lot. Similar to the discussion regarding buffers in the previous paragraphs, Staff understands the desire of the property owner to have the existing conditions be considered compliant. The

problem is that when its time to redevelop, the subject property will no longer have to comply with standards that its neighboring properties have been held to, and for what reason? The applicant has not provided any justification for allowing a reduction in parking dimensions. Furthermore, an 8x16 parking space with a one-way drive aisle is a very narrow space to navigate and with the seasonal influx of drivers unfamiliar to the roads and parking lots of the island, Staff is concerned about the safety ramifications of supporting this request.

Staff would propose a compromise on this particular request that the applicant utilize the dimensions laid out in request #6 until the time of redevelopment, at which time they would be required to install a new parking lot that meets buffer requirements and parking lot dimensions set forth in Sec. 34-2016.

The final request is to allow relief from the visibility triangle requirements as set forth in Sec. 34-622(b) and Sec. 34-3131. The applicant refers to a sketch provided with material for both this case and another so it was unclear as to what the intent of each document was. And once again, no justification was submitted with this request, so Staff was unable to provide an analysis. Therefore Staff must recommend denial of the request.

Recommendation

Staff recommends the following:

1. Section 34-676(b) parking lot location to permit off-street parking in the front and side yard as depicted on the site plan *Exhibit E* - **APPROVAL WITH CONDITIONS**
2. A variance from Table 10-8 from a Type D buffer for Old San Carlos and from Third Street to existing conditions - **DENIAL**
3. Section 10-416(d) requiring buffer between parking and ROW to allow zero buffer - **DENIAL**
4. Section 10-416(d) requiring a type C/F buffer along rear property line to allow existing six (6') foot fence along rear property line - **DENIAL**
5. Section 34-677(b)(3) requiring a buffer between off street parking and a ROW to allow zero buffer - **DENIAL**
6. Section 34-2016 (1) and (2) parking dimensions to allow the following:

a. Angle	Parking Dim.	One-Way	Two-Way
b. 45°	8' x 16'	10'	20'
c. 60°	8' x 16'	12'	20'
d. 75°	8' x 16'	15'	20'
e. 90°	8' x 16'	18'	20'

APPROVAL WITH CONDITIONS
7. Section 34-622 (b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in sketch - **DENIAL**

January 7, 2014

Ms. Leslee Dulmer
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, Florida 33931

VIA E-MAIL (leslee@fortmyersbeachfl.gov)
AND REGULAR U. S. MAIL

RE: REZ2013-0001; SEZ2013-0005; and Variances - Houseboat
(formerly Matanzas CPD)

Dear Ms. Dulmer:

John W. Richard, Trustee has filed an application to rezone four (4) parcels on Old San Carlos Boulevard (420, 430, 440) and 1010 Second Street from Commercial Planned Development (CPD) which are part of a larger CPD under separate ownership to the Downtown Zoning District. In addition, we are requesting certain special exception uses as authorized by the Downtown Zoning District.

SPECIAL EXCEPTIONS (SEZ2013-0005):

1. Retail store, large, as defined in LDC Chapter 34 with floor area larger than 5,000 square feet
2. Parking lot, shared and permanent

In preparing for the LPA hearing, Mr. Richard engaged the services of an architect and a professional engineer to review both Chapter 34 and Chapter 10 to request appropriate variances for the ongoing operation and for the future design consistent with the design criteria for Downtown and the Pedestrian Commercial Future Land Use Map Designation. In addition, we are requesting the following:

VARIANCES:

1. Section 34-676(b) parking lot to permit off-street parking in the front and side yard as depicted on the site plan reflecting the current condition for the parcel and as depicted on the site plan for future development
2. A variance from Table 10-8, Section 34-677(b)(3) and Section 10-416(d) from the Type D buffer to a 2.5 foot buffer

3. A variance from LDC Section 10-416(c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements
4. Variance from LDC Section 34-2016(1) and (2) for revised parking space and aisle dimensions
5. Variance from Section 34-622(a) and 34-3131 to eliminate visibility triangle on Second Street and Third Street as reflected by the sketch.

In addition, there is a request pursuant to Section 34-674(a) to permit building overhang onto the right-of-way for dimension of 12 feet. This is not a variance from the regulation but a request pursuant to the regulation.

Special exception request to add "Parking, Shared and Permanent":

Parking lot, shared permanent, is defined in Section 34-2 Definitions, "means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons or assigned to specific businesses or property."

A portion of the parcel has been utilized for parking for many years.

This request is to permit shared parking on this parcel. Parking for the public is a necessary and desired use in the Downtown zoning district. Providing parking for the public provides the ability to implement the Town's "park once" philosophy. A visitor or resident of the Town can park in the Downtown District and from that location enjoy the Town's assets to include: the beach, the restaurants, the retail, and the bay - so that a number of amenities offered by the Downtown are visited without having to relocate the vehicle.

The parcel is located in the Pedestrian Commercial Future Land Use designation which is defined as follows:

POLICY 4-B-6 "PEDESTRIAN COMMERCIAL": a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%. (emphasis supplied).

Shared and permanent parking is a use consistent with the Pedestrian Commercial designation. The request meets or exceeds all performance and locational standards. The continued use (and expanded) of parking which has been in effect for many years will have no impact on environmentally critical or natural resources.

Parking will have no adverse impact on the surrounding properties. In fact, parking in proximity to surrounding uses is a positive impact. The property adjacent immediately to the north is retail and resort use; the use to the west is Old San Carlos Boulevard and retail, motel, restaurant and parking uses; and the use to the south is restaurant use; the use to the east is residential and resort.

The site plans submitted with the request show the location of the existing parking lot and future proposed parking for "permanent and shared parking" use.

The draft Downtown Development Agency and Review of Redevelopment and Activities Report ("Downtown Report") was presented to Town Council on November 18, 2013 and it supports the holistic approach to redevelopment and includes the following goal:

"• Identify the best design to maximize pedestrian activity and minimize traffic conflicts."

The Downtown Report reviews the prior Fort Myers Beach studies, reports and plans. In 1998 Redevelopment Plan reviewed and adopted the strategy of

"• Shared parking behind businesses on Old San Carlos."

The "Old San Carlos Boulevard – Crescent Street Master Plan" prepared and adopted in 1999 was prepared to implement the "park once" strategy which was defined as encouraging visitors to park one time and walk to various Downtown destinations. This plan suggested that the Land Development Code should accommodate shared parking.

Thereafter, the Land Development Code was amended to promote the "park-once" concept which can only be implemented by shared parking facilities.

The "park-once" concept only works with provision of shared parking as defined in the Land Development Code. Approving "parking, shared and permanent" is consistent with the Land Development Code criteria for a special exception in the same manner that the Council approved the shared parking on the neighboring Shipwreck parcel in 1999 and 2001.

Valet parking is also planned for both the parcel. It is an appropriate mechanism to maximize parking which is consistent with the Downtown Report, prior studies and plans reviewed and adopted by the Town and valet parking has been approved in other locations in the Town.

Special exception – Retail, large:

This is a request for a special exception for retail large in the Downtown zoning District. This application accompanies an application to rezone this parcel on Old San Carlos Boulevard to the Downtown conventional zoning district. The subject property is located in the Pedestrian Commercial Future Land Use designation which is defined earlier in this correspondence.

The purpose of the Downtown zoning district is to “create the desired quality and character for the center of pedestrian-oriented commercial activities within the Town.” LDC Section 34-671. Old San Carlos is intended to serve as the Town’s “Main Street”. “Retail, large” is compatible with the intent and purpose of the Downtown zoning district. The Downtown zoning district permits Open Residential, Lodging, and Retail Office and Civic uses.

Retail store is defined and means:

An establishment operating within a fully enclosed building that provides goods and incidental services directly to consumers where such goods are available for immediate purchase or rental. Retail stores are classified as small (less than 5,000 square feet) or large (more than 5,000 square feet), based on gross floor area per establishment. The following types of establishments are not considered to be retail stores for the purposes of this chapter: *Automobile fuel pumps, Automobile rentals, Marina, and Mini-warehouse.*

The Pedestrian Commercial future land use designation pursuant to Policy 4-B-6 of the Fort Myers Beach Comprehensive Plan states that it is intended to be a “commercial district applied to the intense activity center of Times Square (including Old Carlos and nearby portions of Estero Blvd.)”.

The commercial activities must contribute to the pedestrian-oriented public realm. Retail furthers Policy 4-B-6 of the Comprehensive Plan because it is pedestrian-oriented and this location is in close proximity and walking distance to nearby hotels, motels, restaurants and other commercial establishments promoting the walkability of the Time Square district. “Retail large” is consistent with the existing and planned uses for Old San Carlos.

All of the surrounding properties have the future land use classification of Pedestrian-Commercial and the surrounding properties are either in the Downtown zoning district or zoned Commercial Planned Development District with compatible uses.

Retail is a use consistent with the Downtown core and is proposed to be the first floor in a three (3) story building and the request is for 9,156 square feet. The site plans submitted with the request show existing development and the location of the proposed “retail, large” on this parcel with parking to the rear. The site plan illustrates the surrounding rights of way.

In support of the Variances from:

1. Section 34-676(b) parking lot locations from off-street parking not being in front or side yards to permit the existing parking to remain in front and side yard. In support of this Variance, it should be recognized that the existing parking use which is located in the front and side yards exist and has been approved by the Town Council in the Matanzas CPD and has been constructed pursuant to a Town issued development order. The use of off-street parking is a valuable asset to the Town as there is not sufficient parking to serve the parking demand. This use will benefit the Downtown District to include the merchants and restaurant owners in this District. The granting of the Variance will not injure or be detrimental, to the contrary off-street parking is an asset to the Downtown District. This use provides parking for the core area of the Downtown District which is Time Square and Old San Carlos and which is the most intense area within the Town. Much of Old San Carlos is developed with existing buildings and therefore variance related to parking along Old San Carlos is appropriate where it exists. The development regulations are unique along Old San Carlos. It is not practical to amend the regulation that applies to the remainder of the Downtown District.

2. Section 34-677(b)(3), 10-416(d) and Table 10-8: (1) from a 15' Type D Buffer between parking lots and ROW to 2.5-foot buffer and (2) from Type C/F along rear lot line to allow the 6-foot fence as buffer. This is a request from this LDC section that we respectfully submit that a variance should be granted from this provision of the Code where Old San Carlos, Second Street and Third Street have unique "build-to lines."

Section 34-676 provides support for the Town's "Park Once" district. Although future goals include the Town providing additional parking, the Town should support maintaining existing parking and support additional parking to be provided by the private sector.

As to the reduced buffer between the parking and ROW, we specifically submit that the proposed buffer is sufficient for the visual mitigation of the parking. The provision of a unique and different type of buffer is consistent with the Town's vision for Old San Carlos.

The buffer provision applies to all of the Downtown District reflected in Figure 36-7, but the LDC requires that **ONLY** Old San Carlos have a build-to line of zero feet (0') setback.

Also the build-to-line along Second Street and Third Street is zero foot (0') to five feet (5'). See LDC 34-674(a)(1)b. A fifteen foot (15') buffer on each side lot line is a thirty foot (30') taking of parking.

The parking is an existing use on this site that was approved and developed prior to the adoption of Downtown buffer provisions which provisions are intended to apply to the entire Downtown District which has different build-to lines than Old San Carlos, Second Street and Third Street.

We believe the reduced buffer is the minimum variance. The prior approval established that a Type D buffer should not eliminate the current parking. The current parking is an asset to the Town and the Downtown District. Approval of the variances is the appropriate relief rather than amending the Code.

As to the rear lot line variance, the area that is located in the most urbanized area of the Town should not be required to construct walls or dedicate thirty feet (30') of landscaping to a buffer. The property abutting the rear lot line is located in a commercial and resort area which has different expectations regarding the intensity use compared to the residential area south of the Downtown District. The 6-foot fence is a sufficient buffer.

3. A variance from LDC Section 10-416(c), Internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2(a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2(d) no landscape every 10 spaces requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass; and 2(g) tree grates.

Justification for relief from Section 10-416(c). This section of the Code authorizes staff to grant administrative relief. Staff recommended that it be included in this public hearing application to provide a full picture of the request. Section 10-416(c) provides a landscaping requirement for internal improvements to parking lots. Basically it appears this provision was taken from the Lee County Code which recognizes that parking is typically placed along the front of the parcel between the right-of-way and the principal structure. Therefore, landscaping is part of the public view area. The specific design requirements for the Downtown core and specifically Old San Carlos requires that buildings be built with a zero (0) to five (5) foot build-to from the Old San Carlos street right-of-way. Thus, permanent parking on small lots along Old San Carlos should not require internal landscaping along the rear of the property. Also it should be recognized that the origin of these provisions from the Lee County Code typically apply to larger parcels than one finds in the Downtown core of Fort Myers Beach. Therefore, these regulations on relatively small parcels compared to the application of these criteria on large tracts affects the ability to provide parking. Therefore, it is a benefit not only to the property owner but to the Town to maximize the parking and maximizing the parking is consistent with the planning strategies developed and adopted by the Town Council for Times Square and Old San Carlos.

Variance No. 4

A variance from Land Development Code Section 34-2016(1) and (2), Dimensions, to permit

Angle	Parking Spaces	One-Way Aisle	Two-Way Aisle
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

Justification. 90° parking and dimensions have been in existence on the adjacent parcel of Shipwreck for over a decade serving as shared parking. Also, those dimensions for 90° parking were approved in 2003 by Town Council Resolution 03-35 for this parcel. Parking has operated safely and efficiently with these dimensions. These are appropriate dimensions for the size of the vehicles that typically use shared parking.

Variance No. 5

A variance from Section 34-622(a) and Section 34-3131 to eliminate visibility triangle for the access on Second Street and on Third Street.

Justification. Our engineer has studied the site and prepared an exhibit that reveals that no triangle is necessary. The on-site visibility triangle provides no benefit and is not necessary for ingress or egress to the parking area and will not provide increased visibility in this location.

- Request: The Code provides that an application must request permission for an overhang within the right-of-way pursuant to Section 34-674(a)(4). This is a request for a 12-foot overhang.

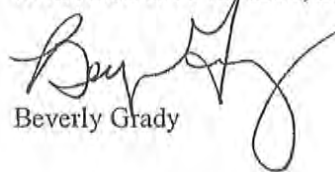
Justification. Land Development Code provides that a property owner may extend an overhang into the right-of-way along Old San Carlos with permission from the Town of Fort Myers Beach. A similar overhang is already approved for portions of Old San Carlos such as Zushi Sushi and at Shipwreck. Overhangs provide protection from inclement weather as well as the sun and therefore encourage pedestrian activity.

Enclosed are the site plans:

1. Special Exception for "Retail, large"
2. Special Exception for parking (current)
3. Special Exception for parking (future)
4. Variances 1, 2 and 3, site plan
5. Variance 4, parking dimensions
6. Variance 5, visibility triangle

Very truly yours,

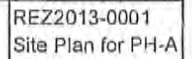
ROETZEL & ANDRESS, LPA



Beverly Grady

BG/ro
Enclosures
cc: John Richard

spectral exception



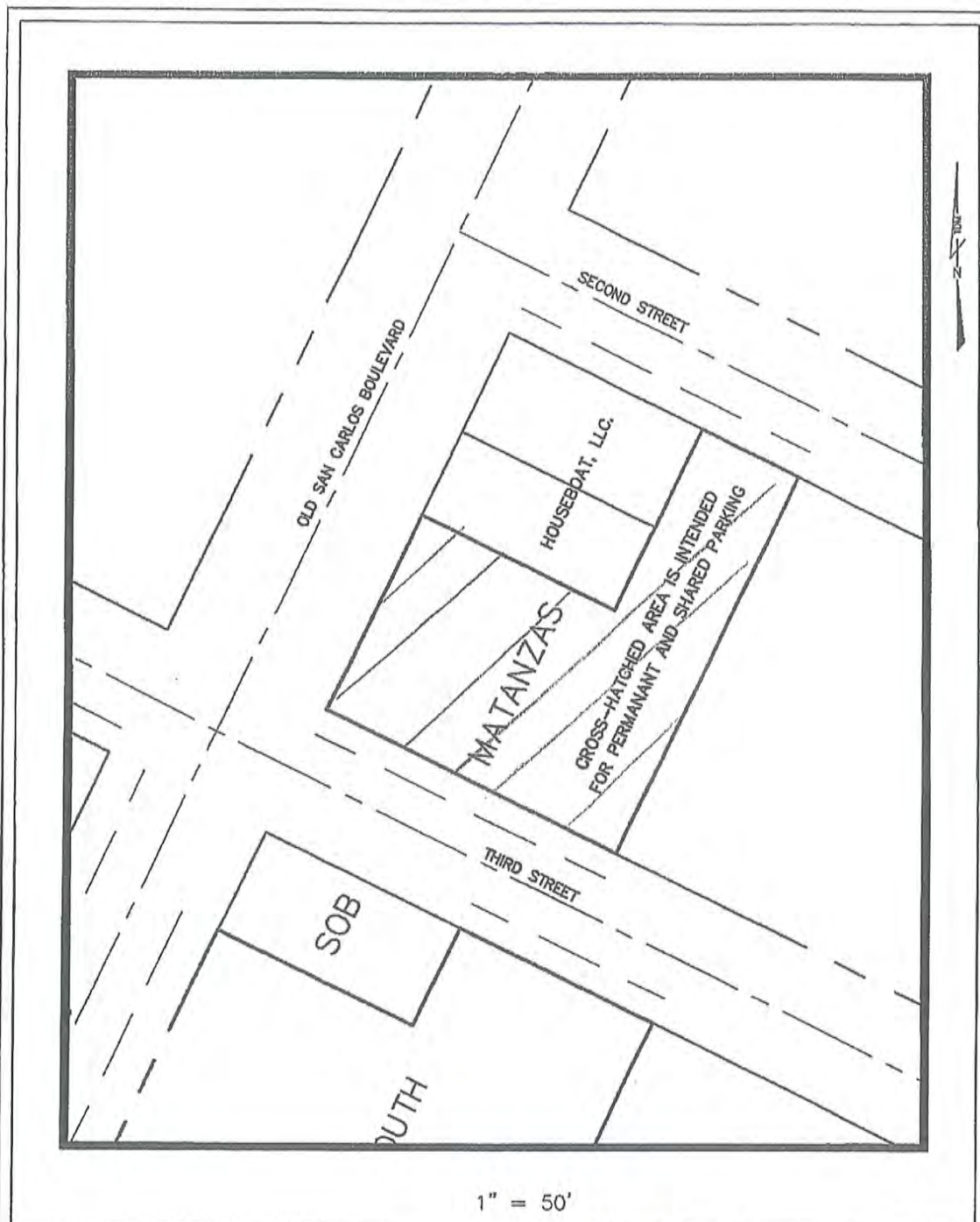


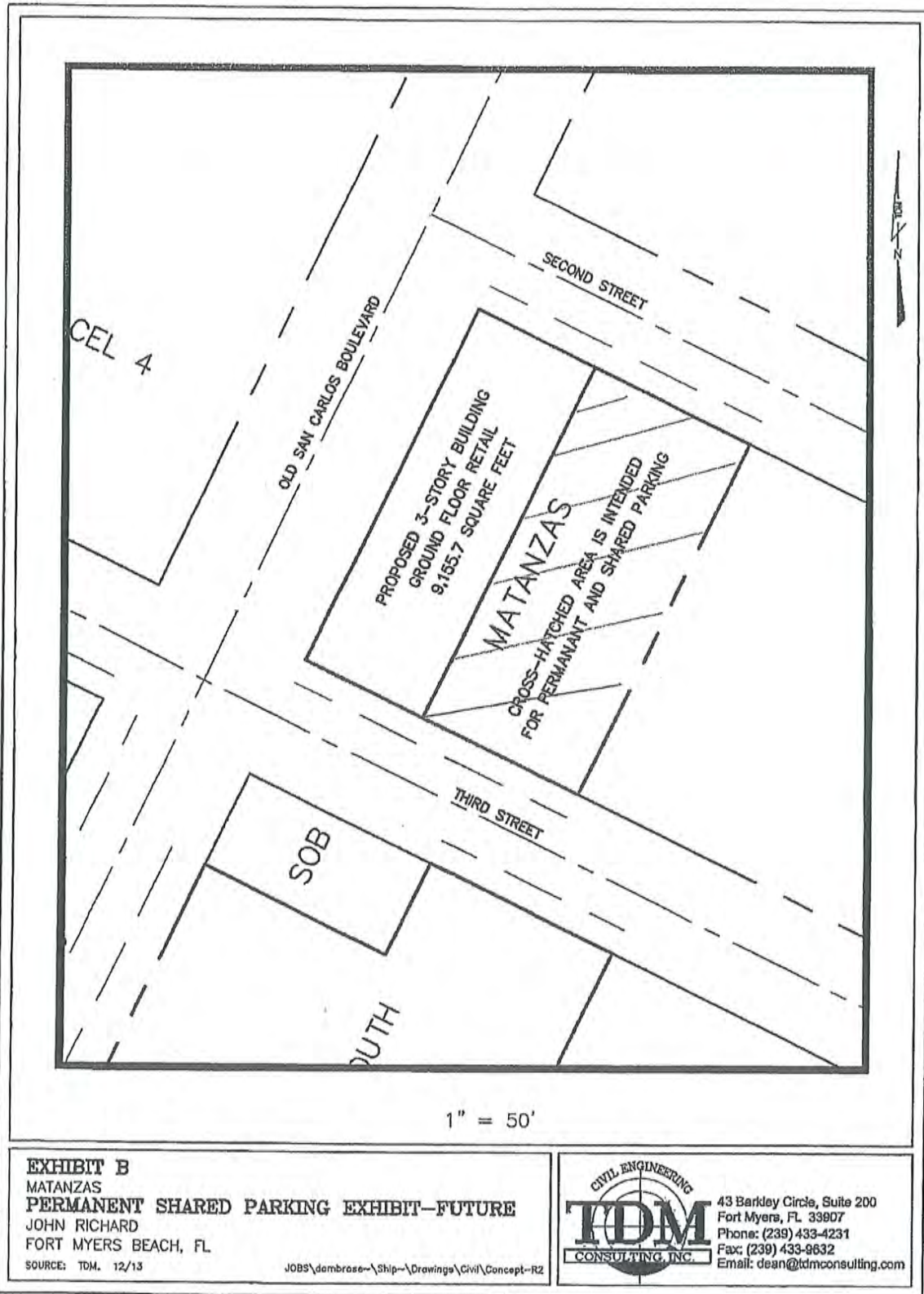
EXHIBIT A
MATANZAS
PERMANENT SHARED PARKING EXHIBIT-CURRENT
 JOHN RICHARD
 FORT MYERS BEACH, FL
 SOURCE: TDM, 12/13

JOB5\dombrose~\Ship~\Drawings\Civil\Concept-R2

CIVIL ENGINEERING
TDM
 CONSULTING, INC.
 43 Barkley Circle, Suite 200
 Fort Myers, FL 33907
 Phone: (239) 433-4231
 Fax: (239) 433-9832
 Email: dean@tdmconsulting.com

special exception

2



special exception

3

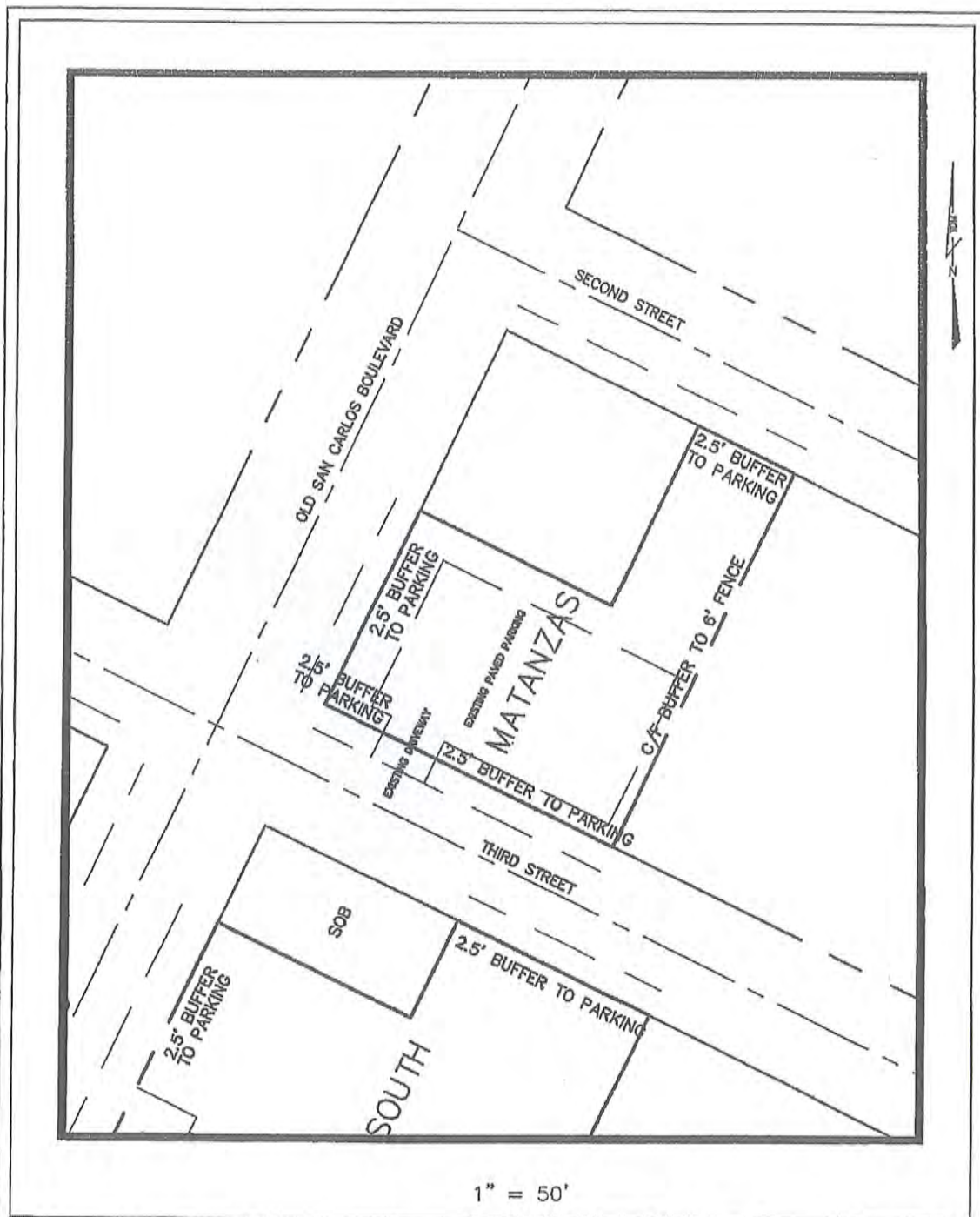


EXHIBIT A
MATANZAS
REDUCED BUFFER EXHIBIT

JOHN RICHARD
 FORT MYERS BEACH, FL

SOURCE: TDM, 12/13

JOBS\dambrose~\Ship~\Drawings\Civil\Concept-R2



43 Barkley Circle, Suite 200
 Fort Myers, FL 33907
 Phone: (239) 433-4231
 Fax: (239) 433-9632
 Email: dean@tdmconsulting.com

- (1) parking in front/side yard
- (2) buffer
- (3) no internal landscape

variance 1, 2, 3

4

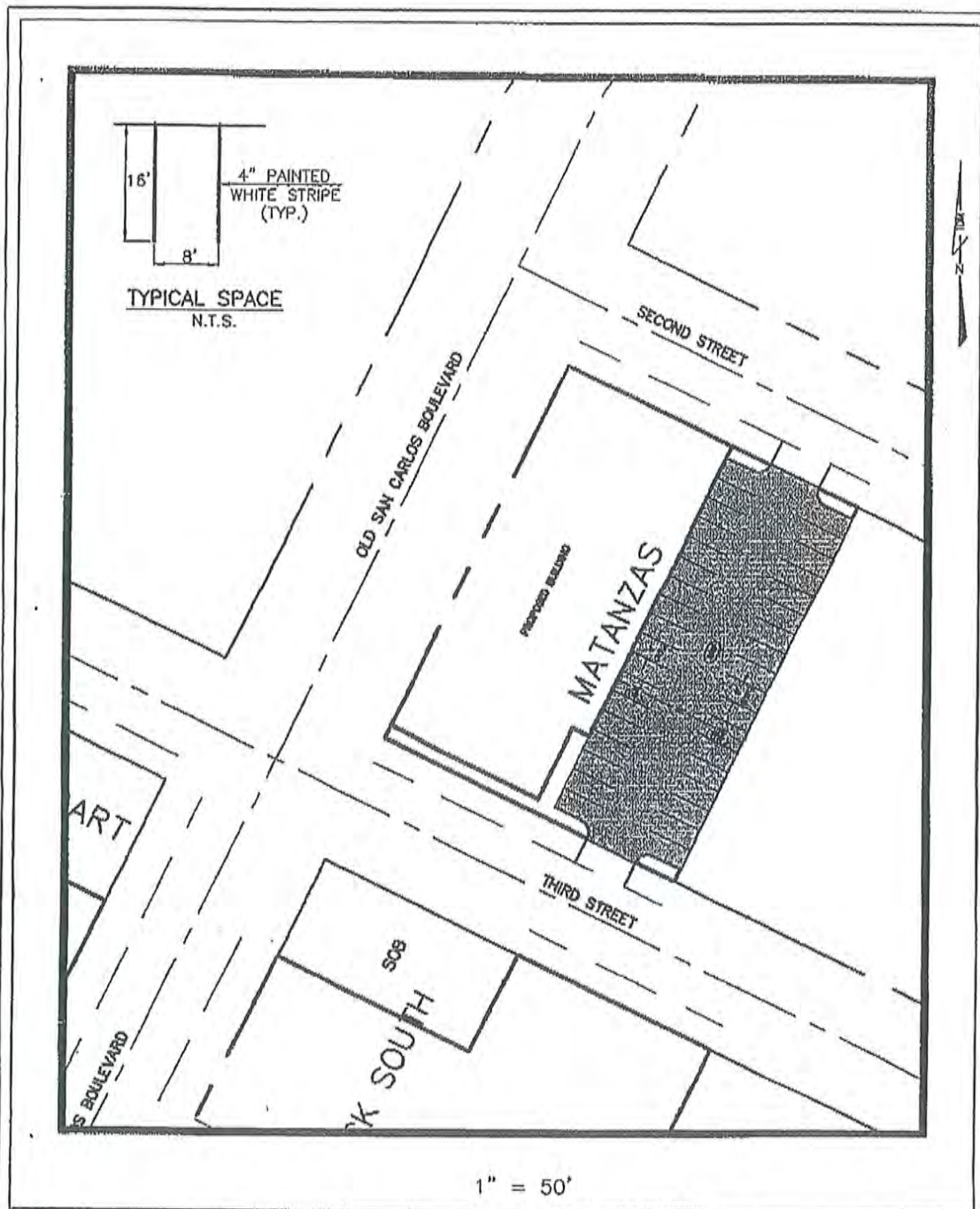


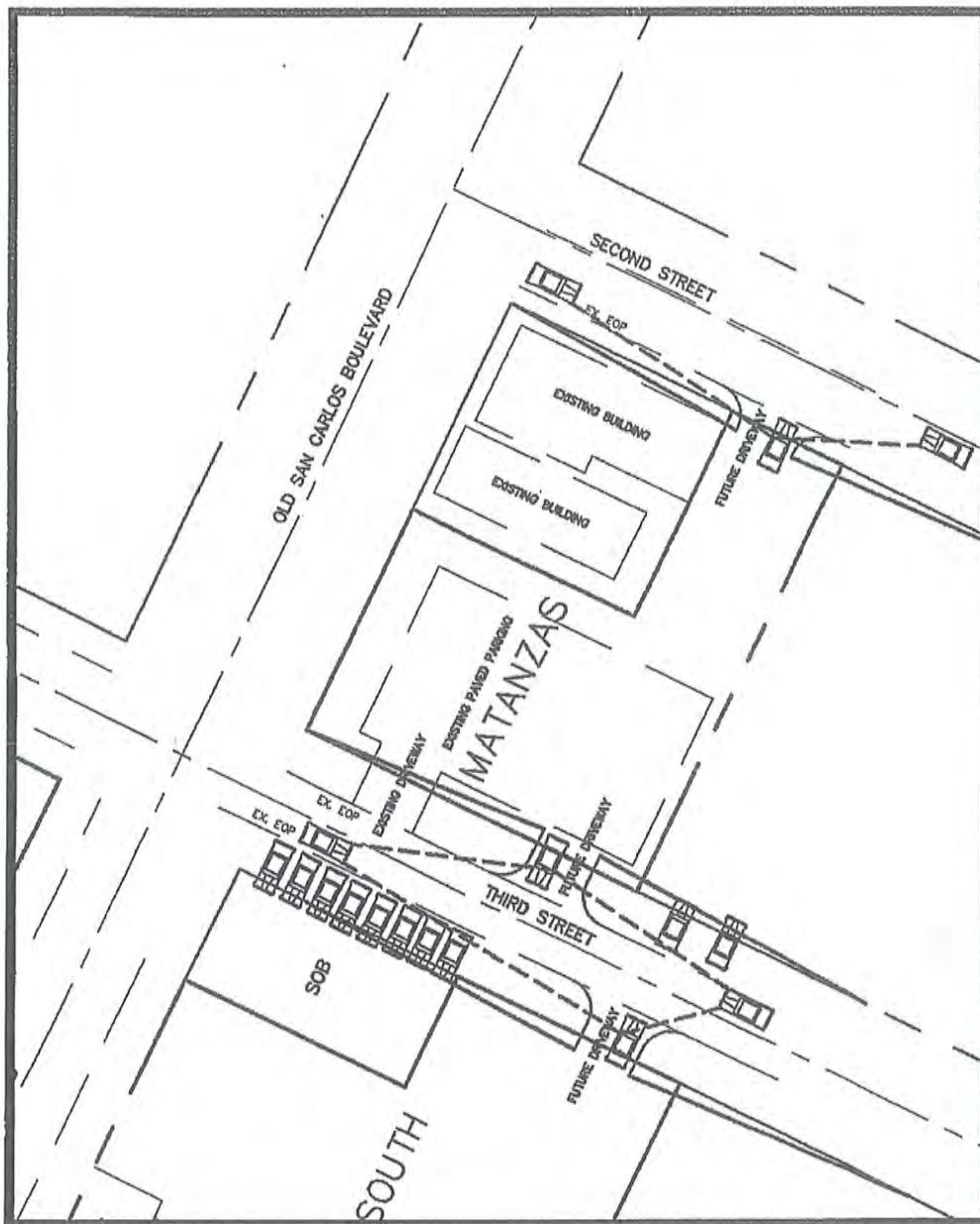
EXHIBIT A
MATANZAS
PARKING LAYOUT-
JOHN RICHARD
FORT MYERS BEACH, FL
 SOURCE: TDM, 12/13

Parking
 dimension
 variance

JOBS\dambrone~\Ship~\Drawings\Civil\Concept-R2



43 Barkley Circle, Suite 200
 Fort Myers, FL 33907
 Phone: (239) 433-4231
 Fax: (239) 433-9832
 Email: deane@tdmconsulting.com



1" = 50'

EXHIBIT 1
MATANZAS
SITE VISIBILITY TRIANGLE EXHIBIT
 JOHN RICHARD
 FORT MYERS BEACH, FL
 SOURCE: TDM, 12/13

JOBS\dombrose~\Ship~\Drawings\Civil\Concept-R2



43 Barkley Circle, Suite 200
 Fort Myers, FL 33907
 Phone: (239) 433-4231
 Fax: (239) 433-9832
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6

O'Brien, Robin

From: O'Brien, Robin
Sent: Monday, December 16, 2013 5:02 PM
To: 'leslee@fortmyersbeachfl.gov'
Cc: Grady, Beverly; jwr@embarqmail.com; 'Dean Martin (dean@tdmconsulting.com)'
Subject: AMENDED SUBJECT LINE: Richard / Matanzas - Narrative Statement for Special Exception ; Amended Narrative amending existing variances already filed; Addendum for Additional Relief
Attachments: Richard _ Matanzas - narrative for special exception request 12_16_13(7881006_1)(2).DOCX; Addendum to Narrative for Matanzas variance of 10_31_13(7881358_1)(2).DOCX; NARRATIVE - MATANZAS variance in conjunction w_rezoning_special exception 10_31_2013(7881773_1).DOCX

Ms. Dulmer: Please see amended subject line regarding Richard / Matanzas. My apologies.

From: O'Brien, Robin
Sent: Monday, December 16, 2013 4:53 PM
To: 'leslee@fortmyersbeachfl.gov'
Cc: Grady, Beverly; jwr@embarqmail.com; 'Dean Martin (dean@tdmconsulting.com)'
Subject: Richard / Matanzas - Special Exception adding North Parcel of Shipwreck; Amended Narrative amending existing variances already filed; Addendum for Additional Relief

Ms. Dulmer:

The attached are being sent to you pursuant to Beverly Grady's instructions.

Robin O'Brien

Legal Secretary to Sean M. Ellis and Beverly Grady
(and the retired Steven I. Winer)

 **ROETZEL**
2320 First Street, Suite 1000
Ft. Myers, FL 33901
Direct Phone No.: 239.338-4254
Main Phone No: 239.337.3850
Fax No.: 239.337.0970
Email: robrien@ralaw.com
www.ralaw.com

Roetzel & Andress, A Legal Professional Association

Both Robin O'Brien and Roetzel & Andress intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Robin O'Brien immediately at 239-338-4254. Thank you.

TOWN OF
FORT MYERS BEACH

DEC 16 2013

RECEIVED BY

NARRATIVE STATEMENT FOR SPECIAL EXCEPTION REQUEST TO ADD "PARKING,
SHARED AND PERMANENT" TO MATANZAS (December 16, 2013)

This is a request for a special exception for permanent shared parking on Matanzas parcel.

Parking lot, shared permanent, is defined in Section 34-2 Definitions, "means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons or assigned to specific businesses or property."

A portion of the parcel has been utilized for parking for many years.

This request is to permit shared parking on this parcel. Parking for the public is a necessary and desired use in the Downtown zoning district. Providing parking for the public provides the ability to implement the Town's "park once" philosophy. A visitor or resident of the Town can park in the Downtown District and from that location enjoy the Town's assets to include: the beach, the restaurants, the retail, and the bay - so that a number of amenities offered by the Downtown are visited without having to relocate the vehicle. The parking lot is paved for high turnover use.

The parcel is located in the Pedestrian Commercial Future Land Use designation which is defined as follows:

POLICY 4-B-6 "PEDESTRIAN COMMERCIAL": a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%. (emphasis supplied).

Shared and permanent parking is a use consistent with the Pedestrian Commercial designation. The request meets or exceeds all performance and locational standards. The continued use (and expanded) of parking which has been in effect for many years will have no impact on environmentally critical or natural resources.

Parking will have no adverse impact on the surrounding properties. In fact, parking in proximity to surrounding uses is a positive impact. The property adjacent immediately to the north is retail, resort and restaurant use and the use across Third Street is a parking use; the use to

the west is Old San Carlos Boulevard and retail, motel, restaurant and accessory parking uses; and the use to the south is restaurant use.

The site plan submitted with the request shows the location of the “permanent and shared parking”.

The draft Downtown Development Agency and Review of Redevelopment and Activities Report (“Downtown Report”) was presented to Town Council on November 18, 2013 and it supports the holistic approach to redevelopment and includes the following goal:

“• Identify the best design to maximize pedestrian activity and minimize traffic conflicts.”

The Downtown Report reviews the prior Fort Myers Beach studies, reports and plans. In 1998 Redevelopment Plan reviewed and adopted the strategy of

“• Shared parking behind businesses on Old San Carlos.”

The “Old San Carlos Boulevard – Crescent Street Master Plan” prepared and adopted in 1999 was prepared to implement the “park once” strategy which was defined as encouraging visitors to park one time and walk to various Downtown destinations. This plan suggested that the Land Development Code should accommodate shared parking. T

Thereafter, the Land Development Code was amended to promote the “park–once” concept which can only be implemented by shared parking facilities.

The “park–once” concept only works with provision of shared parking as defined in the Land Development Code. Approving “parking, shared and permanent” on the North Parcel is consistent with the Land Development Code criteria for a special exception in the same manner that the Council has approved the shared parking on the South Parcel in 1999 and 2001.

Valet parking is also planned for both the North and South Parcels of Shipwreck. It is an appropriate mechanism to maximize parking which is consistent with the Downtown Report, prior studies and plans reviewed and adopted by the Town and valet parking has been approved in other locations in the Town.

NARRATIVE FOR MATANZAS BUFFER VARIANCE IN CONJUNCTION WITH RE-
ZONING/SPECIAL EXCEPTION October 31,2013
(Revised December 16, 2013)

This is a request for a variance from:

2. Section 34-677(b)(3), 10-416(d) and Table 10-8 (1) from a 15' Type D Buffer between parking lots and ROW to the existing condition and (2) from Type C/F along rear lot line to allow the 6-foot fence as buffer. In an abundance of caution this is a request from this LDC section as we respectfully submit that a variance should be granted from this provision of the Code where Old San Carlos, Second Street and Third Street have unique "build-to lines" and due to the required access with visibility triangles on side streets and Old San Carlos for entrance and exit.

Section 34-676 provides support for the Town's "Park One" district. Although future goals include the Town providing additional parking, the Town should support maintaining existing parking and support additional parking to be provided by the private sector.

As to the buffer between the parking and ROW, we specifically submit that other provisions of the Code reflect that this requirement should not be a requirement along Old San Carlos and that other provisions of the Code justify this relief for an existing use from a code adopted after the approval and implementation of this use.

The buffer provision applies to all of the Downtown District reflected earlier in Figure 36-7. But the LDC **requires** that **ONLY** on Old San Carlos to build-to-line must be zero foot (0') setback. Thus, the LDC requires that the building be a zero setback and any buffer would be required to be removed. The Code does not require a needless act.

There is no reason to require the LDC Table 10-8 15' Type D buffer with trees and hedge that encroaches into the rear yard. Also the build-to-line along Second Street and Third Street is zero foot (0') to five feet (5'). See LDC 34-674(a)(1)b. A fifteen foot buffer on each side lot line is a thirty foot taking of parking.

The parking is an existing use on this site that was approved and developed prior to adoption of the Downtown buffer provisions which provisions are intended to apply to the entire District which has different build-to-lines than Old San Carlos, Second Street and Third Street.

This is the minimum variance. This prior approvals establish that the Type D buffer should not eliminate current parking as it currently operates which parking is an asset to the Town and the Downtown District. Approval of the variance is the appropriate relief rather than amending the Code.

As to the rear lot line variance, the area that is located in the most urbanized area of the Town should not be required to construct walls or dedicate 30 feet to a buffer. The area abutting the rear lot line is located in a commercial and resort area with different expectations regarding intensity of use compared to residential area south of the Downtown. The 6 foot fence is sufficient buffer.

We request staff's recommendation of approval of the variances.

ADDENDUM FOR ADDITIONAL VARIANCE RELIEF (MATANZAS)
DATED DECEMBER 16, 2013
VAR2013-0006

This is a request for additional variance.

3. A variance from LDC Section 10-416(c), Internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2(a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2(d) no landscape every 10 spaces requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass; and 2(g) tree grates.

Justification for relief from Section 10-416(c). This section of the Code authorizes staff to grant administrative relief. Staff recommended that it be included in this public hearing application to provide a full picture of the request. Section 10-416(c) provides a landscaping requirement for internal improvements to parking lots. Basically it appears this provision was taken from the Lee County Code which recognizes that parking is typically placed along the front of the parcel between the right-of-way and the principal structure. Therefore, landscaping is part of the public view area. The specific design requirements for the Downtown core and specifically Old San Carlos requires that buildings be built with a zero (0) to five (5) foot build-to from the Old San Carlos street right-of-way. Thus, there will not be permanent parking lots along Old San Carlos that would require internal landscaping. Also it should be recognized that by basically transporting the Lee County Code that often these criteria would apply to larger parcels than one would find in the Downtown core of Fort Myers Beach. Therefore, parking on a relatively small parcel compared to the application of these criteria on large tracts affects the ability to provide parking. Therefore, it is a benefit not only to the property owner but to the Town to maximize the parking and maximizing the parking is consistent with these strategies developed and adopted by the Town Council for Times Square and Old San Carlos.

Variance No. 4

A variance from Land Development Code Section 34-2016(1) and (2), Dimensions, to permit

Angle	Parking Spaces	One-Way Aisle	Two-Way Aisle
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

Justification. 90° parking and aisle dimensions have been in existence on the adjacent parcel of Shipwreck for over a decade serving as shared parking. Those dimensions were approved in 2001 and a Development Order was issued by the Town. Parking has operated safely and efficiently with these dimensions. These are appropriate dimensions for the size of the vehicles that typically use shared parking.

Variance No. 5

A variance from Section 34-622(a) and Section 34-3131 to eliminate visibility triangle for the access on Second Street and on Third Street.

Justification. Our engineer has studied the site and prepared an exhibit that reveals that no triangle is necessary. The on-site visibility triangle provides no benefit and is not necessary for ingress or egress to the parking area and will not provide increased visibility in this location.

Request: The Code provides that an application must request permission for an overhang within the right-of-way pursuant to Section 34-674(a)(4). This is a request for a 12-foot overhang.

Justification. Land Development Code provides that a property owner may extend an overhang into the right-of-way along Old San Carlos with permission from the Town of Fort Myers Beach. A similar overhang is already approved for portions of Old San Carlos such as Zushi Sushi and at Shipwreck. Overhangs provide protection from inclement weather as well as the sun and therefore encourage pedestrian activity.

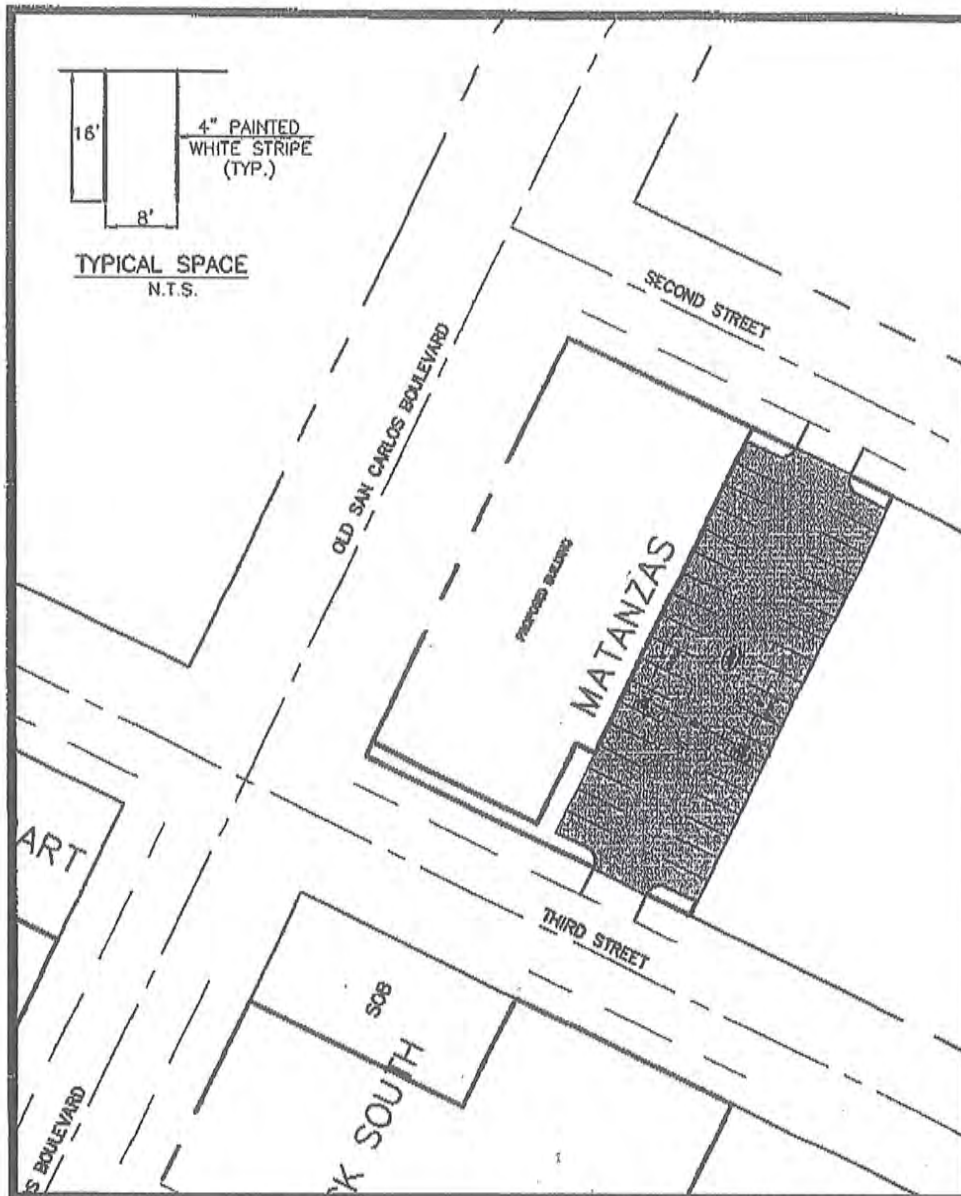
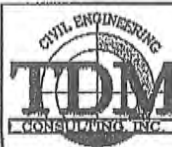


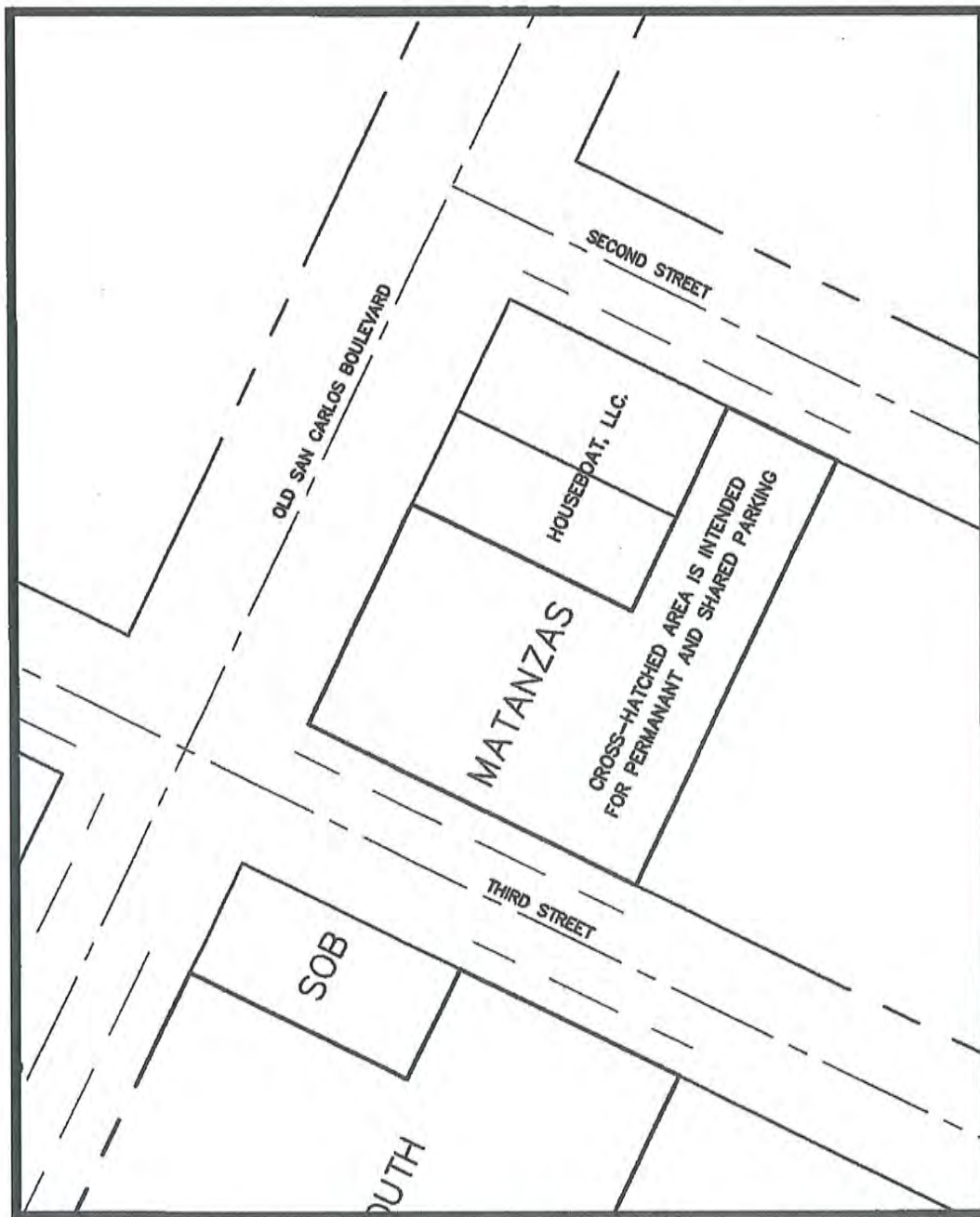
EXHIBIT A
MATANZAS
PARKING LAYOUT
 JOHN RICHARD
 FORT MYERS BEACH, FL
 SOURCE: TDM, 12/13

*Parking
 dimension
 variance*

JOBS\dambrosio\Ship\Drawings\Civil\Concept-R2



43 Barkley Circle, Suite 200
 Fort Myers, FL 33907
 Phone: (239) 433-4231
 Fax: (239) 433-9832
 Email: dean@tdmconsulting.com



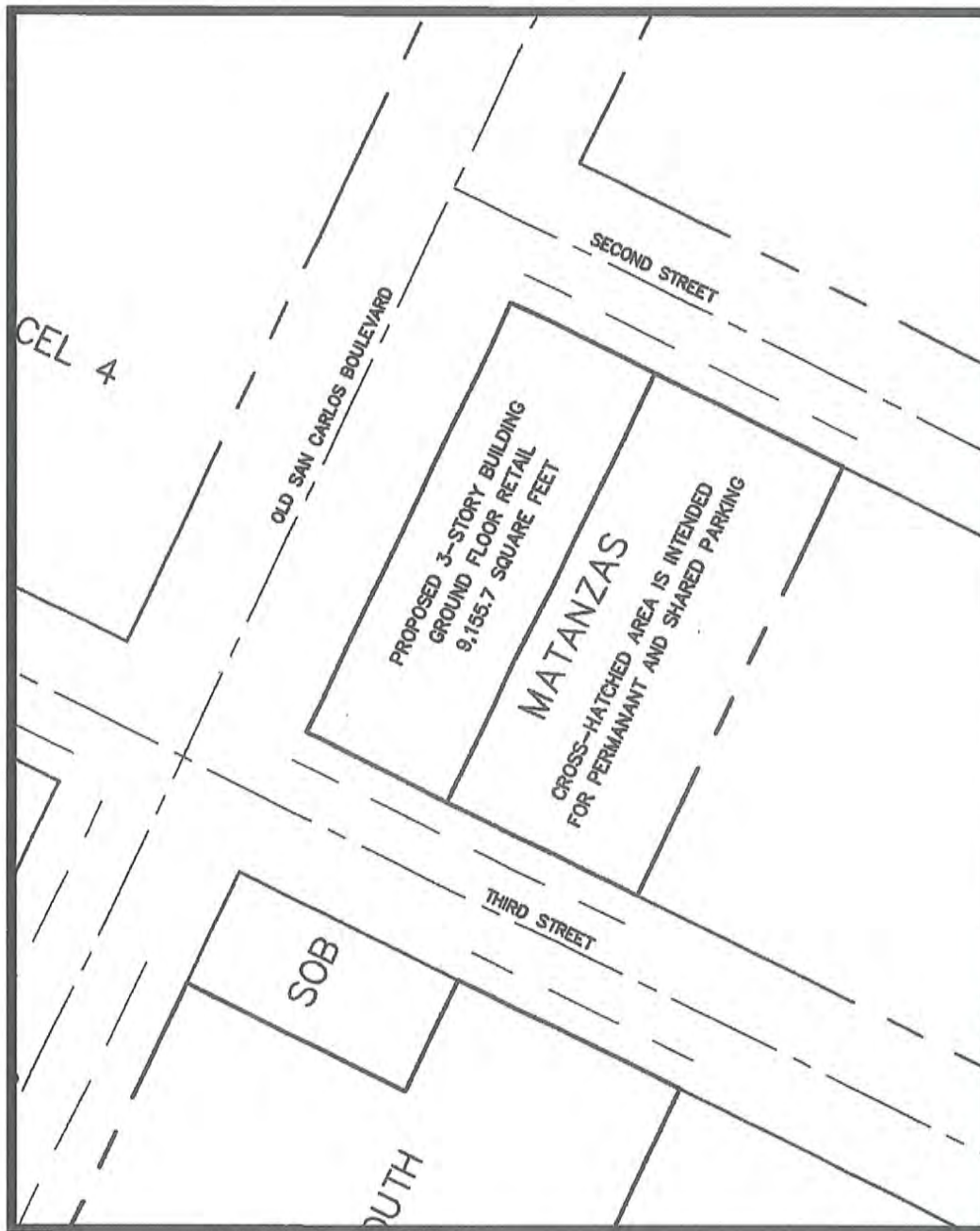
1" = 50'

EXHIBIT A
 MATANZAS
PERMANENT SHARED PARKING EXHIBIT-CURRENT
 JOHN RICHARD
 FORT MYERS BEACH, FL
 SOURCE: TDM, 12/13

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1" = 50'

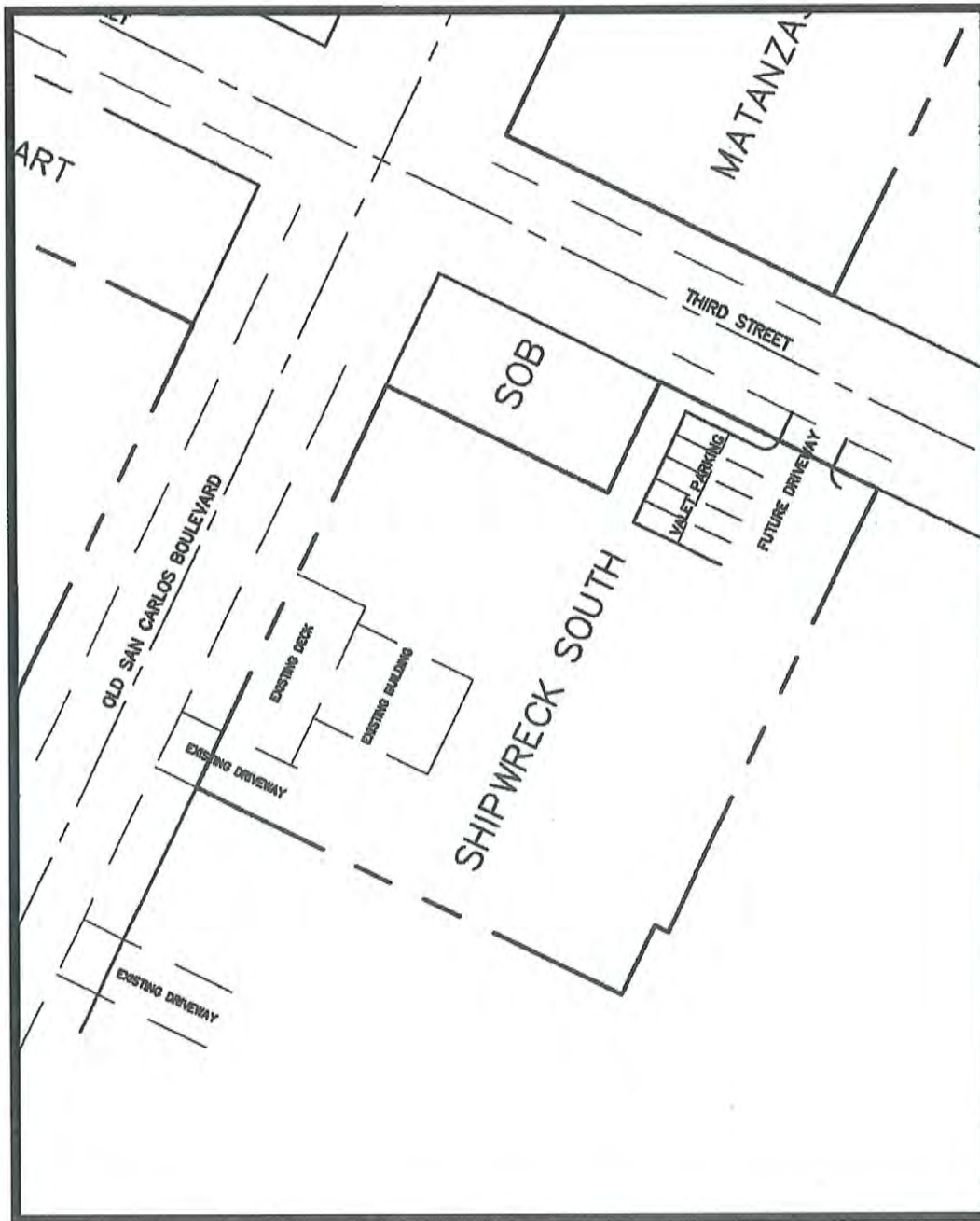
EXHIBIT B
 MATANZAS
PERMANENT SHARED PARKING EXHIBIT-FUTURE
 JOHN RICHARD
 FORT MYERS BEACH, FL

SOURCE: TDM, 12/13

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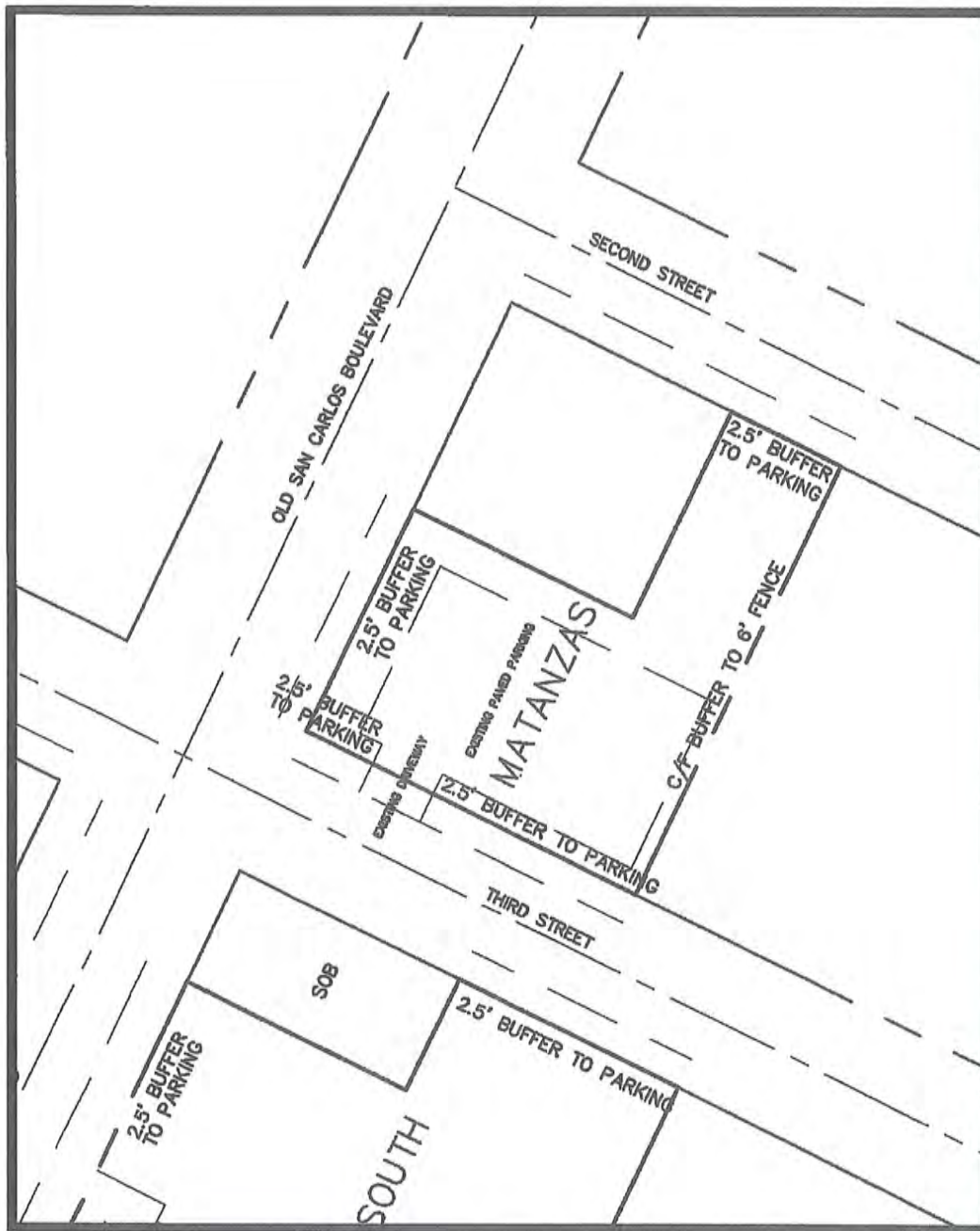
EXHIBIT A
SHIPWRECK SOUTH
VALET PARKING EXHIBIT
JOHN RICHARD
FORT MYERS BEACH, FL

SOURCE: TDM, 12/13

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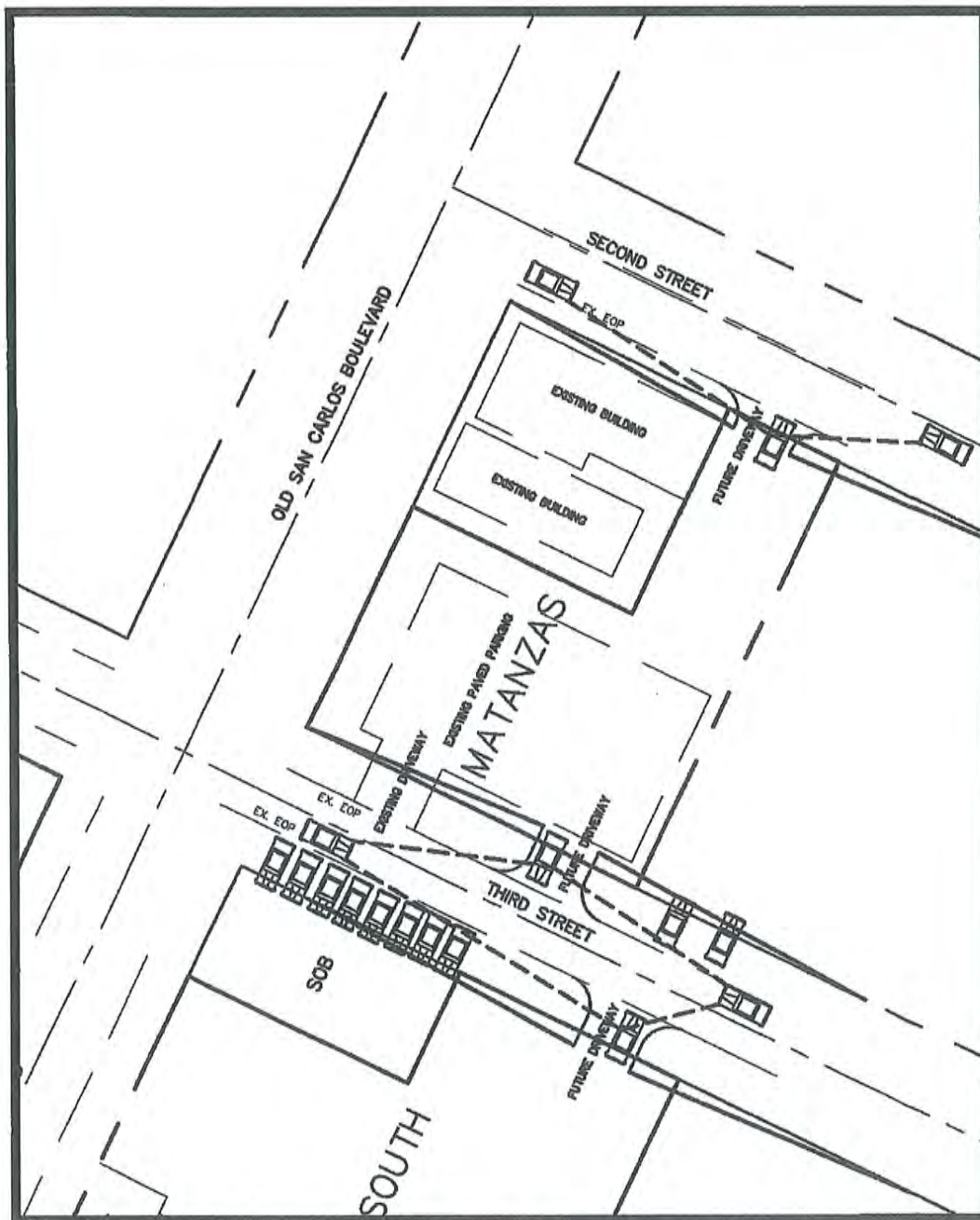
EXHIBIT A
MATANZAS
REDUCED BUFFER EXHIBIT
 JOHN RICHARD
 FORT MYERS BEACH, FL

SOURCE: TDM, 12/13

JOB5\dambrose~\Ship~\Drawings\Civil\Concept-R2



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1" = 50'

EXHIBIT 1
MATANZAS
SITE VISIBILITY TRIANGLE EXHIBIT

JOHN RICHARD
 FORT MYERS BEACH, FL

SOURCE: TDM, 12/13

JOBS\dombrose\Ship\Drawings\Civil\Concept-12



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MEMO

TO: Walter Fluegel, Director of Community Development
Leslee Dulmer, Zoning Coordinator

FROM: Beverly Grady

DATE: December 12, 2013

RE: Review of Matanzas parcel application; Additional Requests

This memorandum sets forth the areas to confirm from the Town and the second part sets forth variance relief, an additional special exception, and overhang permission to be included in the application.

Confirmation with Town:

1. Downtown zoning district is exempt from one (1) tree per 3,000 square feet requirement (10-416[a]).
2. Confirm that Old San Carlos Boulevard (OSC) where the building is at the build-to line of zero feet (0') for front and side is exempt from building edge plantings requirement of 10-416(b).
3. Although 10-416(c) Landscape qualifies for administrative deviation from staff without a public hearing, staff urged adding relief to this public hearing application.

Although the Code provides that existing parking in Downtown zoning district may remain "as is" and no compliance is required with Section 10-416(c) unless and until there is:

new off-street parking or vehicular area (new includes expansion or alteration of vehicular use area) OR expansion of building square footage.

4. Confirm that driveway width pursuant to 34-2013 is twenty feet (20').
5. Confirm there is no minimum open space requirement pursuant to Section 34-677(b) in Downtown and no minimum buffer in Downtown (except when parking is adjacent to right-of-way).
6. Confirm the minimum parking calculations in 34-2020 for a multiple occupancy complex which is 5 or more uses on a parcel where the calculation is as follows:

25% or less restaurant = 2 spaces per 1,000 SF
25%-50% restaurant = 4 spaces per 1,000 SF
50%-75% restaurant = 6 spaces per 1,000 SF
Over 75% restaurant - 8 spaces per 1,000 SF

Therefore if the parcel has 5 tenants or commercial unit owners, the above calculation is appropriate. If there are less than 5 businesses, then each business is calculated on an individual parking calculation.

7. Confirm pursuant to Section 34-2011(b) that "shared parking" lots are opened to the public regardless of designation. Although one must show that the parcel has the required number of parking spaces pursuant to the Code, the approval of "shared parking" by special exception authorizes use of those parking spaces by the public regardless of destination.

8. Confirm that a single dumpster on one parcel may serve several parcels without any additional approval from the Town other than showing the location of the dumpster on a Chapter 10 development order site plan. Confirm that there are no other regulations regarding dumpster other than Section 10-257.

BG/ro
Attachment

Matanzas Variances and Special Exception

Variance from LDC 10-416 Landscape:

(c) When building square footage increases or vehicle parking/use is expanded or altered, a variance from the following internal parking requirements to no internal requirements are requested:

- 2(a) no tree requirement internally
- 2(b) no landscape islands
- 2(c) no 10' minimum width of islands
- 2(d) no requirement for every 10 spaces
- 2(e) no median required
- 2(f) interior landscape
- 2(g) tree grates

(d) VAR2013-0006 Perimeter buffer. A variance is already requested from 34-677(b)(3) for no buffer between off-street parking and right-of-way and this Section with Table 10-8 is listed in an abundance of caution as it is included by reference in the Chapter 34-677 variance request.

Variance from 34-2016(1) and (2) Dimensions to:

Angle	Parking Spaces	One-Way Aisle	Two-Way Aisle
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

VAR2013-0006 from 34-676 Parking in Downtown.

- (b) Parking lot location to permit parking in front and side yards (already requested); and

VAR2013-0006 from 34-677(b) - from buffer between parking on side/front along right-of-way (already requested) (Table 10-8; 10-416[c] and [d]) to zero buffer; and from Type C/F along rear to six foot (6') fence

Add - Request for overhang permission (Section 34-674(a)(4)).

Add - Request special exception for permanent shared parking on Matanzas parcel. Valet parking approval is requested for the parcel.

Variance from Section 34-622 (a) and Section 34-3131 for reduced visibility triangle requirements as set forth in sketch for access onto Third Street and Second Street.

From: [Grady, Beverly](#)
To: [Leslee Dulmer](#); jwr@embarqmail.com
Subject: RE: Shipwreck and Matanzas MATANZAS
Date: Thursday, December 12, 2013 6:00:56 PM

Matanzas

Variance from LDC 10 – 416 (c)) is the same as Shipwreck

Variance from LCD 34- 2016 (1) and (2) parking dimensions to allow: is the same as Shipwreck

Variance from LDC 34 – 676 (b) to allow parking in the front and side yard

Variance from LDC 34 – 677 (b); Table 10-8; Section 10-416 (d) requiring buffer between parking and ROW to allow zero buffer; and

From Type C/F buffer along rear property line to allow existing six foot (6') fence along rear property line

Variance from LDC 34-622 (b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in sketch

Request special exception for permanent shared parking

Request permission for building overhand into right of way pursuant to Section 34-674 (a) 4

From: Leslee Dulmer [<mailto:leslee@fortmyersbeachfl.gov>]
Sent: Thursday, December 12, 2013 4:36 PM
To: Grady, Beverly; jwr@embarqmail.com
Subject: Shipwreck and Matanzas

Beverly,

I got the files for both the Shipwreck parcel (237) and the Matanzas parcel (440), thank you. However, in reading through the last page it is really not clear what you are requesting the variance **to allow**. Can you provide a list of each specific code section and what you are requesting to allow, for example:

A variance from LDC Section 10-416(c) to allow _____

A variance from LDC Section 34-676(b) to allow _____

Etc.

I can't continue/begin to review these additional elements (or advertise them for that matter) without a clear picture of what the end result is you are seeking.

Please contact me if you have any questions.

Thanks,

Leslee Dulmer
Zoning Coordinator

Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931
Phone: 239-765-0202 ext 105
Fax: 239-765-0591

We value your opinion and would ask that you take a minute to complete a survey regarding our Customer Service at the following link: <http://www.surveymonkey.com/s/6T2P9DC>



Think Green. Please print this e-mail only if necessary.

Please Note: Florida has very broad public records laws. Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications may be subject to public disclosure.

Any federal tax advice contained herein or in any attachment hereto is not intended to be used, and cannot be used, to (1) avoid penalties imposed under the Internal Revenue Code or (2) support the promotion or marketing of any transaction or matter. This legend has been affixed to comply with U.S. Treasury Regulations governing tax practice.