

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 96-31

WHEREAS, Donald A. & Anne S. Nyman filed an application for a rezoning from TFC-2 (Two-Family Conservation) to Commercial Planned Development; and

WHEREAS, the subject property is located at 2661-2681 Estero Boulevard and 145 School Street, Ft. Myers Beach, and is described more particularly as:

LEGAL DESCRIPTION: In Section 19, Township 46 South, Range 24 East, Lee County, Florida:

Lots 23-28, Block C, WINKLERS SUBDIVISION as recorded in Plat Book 8, Page 45, of the Public Records of Lee County, Florida, lying in Section 18, Township 46 South, Range 24 East, Lee County, Florida.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 19-46-24-02-0000C.0230 and 19-46-24-02-0000C.0270; and

WHEREAS, Donald A. & Anne S. Nyman, the owners of the subject parcel, authorized Humphrey & Knott, P.A., to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was advertised and held on November 28, 1995 before the Lee County Hearing Examiner who gave full consideration of the evidence available; and

WHEREAS, a public hearing was advertised and held on February 9, 1996 before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons and denied the rezoning; and,

WHEREAS, the applicants applied for and received a F.S. 70.51 hearing and modified their application and requested a rehearing; and,

WHEREAS, a public rehearing was advertised and held on November 18, 1996 before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council ~~APPROVES~~ / DENIES the requested rezoning from TFC-2 to CPD.

SECTION A. CONDITIONS:

The rezoning and Master Concept Plan are subject to the following conditions:

1. The development and use of the subject property is to be in substantial compliance with the approved Master Concept Plan entitled "Nyman - CPD" (7-14-96) as prepared by David Estes & Associates, except as may modified by the conditions herein. Total building area or intensity may not exceed 3,850 square feet of retail and office use and 5 multiple family units, as indicated on the Master Concept Plan.

2. This development may be developed in accordance with the following Property Development Regulations:

**Minimum Setbacks:**

Street:	70 feet (Estero Boulevard)
Side Street:	25 feet (School Drive)
Side:	15 feet
Rear:	15 feet
Minimum Open Space:	20%
Maximum Lot Coverage:	40%
Maximum Building Height:	30 feet above minimum flood elevation

3. The following will be the approved Schedule of Uses for this planned development:

**5 MULTIPLE FAMILY UNITS  
ALL PERMITTED USES OF THE CN-2 DISTRICT  
SINGLE-FAMILY AND DUPLEX DWELLING UNITS - existing only**

4. This zoning approval does not address the mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions may be required at the time of issuance of a local Development Order.
5. Approval of this rezoning does not give the Developer the undeniable right to receive any local Development Order approval that exceeds the Year 2010 Overlay use allocation, if such allocation exists, for the applicable district.
6. This development is to comply with all requirements of the Lee County Land Development Code as amended by the Town of Fort Myers Beach at the time of local Development Order approval, except as may be granted by deviation as part of this planned development.

**SECTION B. DEVIATIONS:**

The Master Concept Plan deviates from several Lee County development standards. The proposed deviations are granted or denied as set forth below:

Deviation 1, which requests relief from LDC Section 10-285 which provides for connection separation of 660 feet along an arterial road to a requested 125 feet along

Estero Boulevard from the center line of School Drive is APPROVED WITH THE CONDITION that the access point is designed and constructed as right-in/ right-out only with a raised traffic median.

Deviation 2, which requests relief from Section 10-285 of the Land Development Code (LDC) providing for a 660 foot connection separation along arterial roads to allow connection separation of 65 feet from the centerline of a private drive is APPROVED WITH THE CONDITION that the access point is designed and constructed as right-in/ right-out only with a raised traffic median.

Deviation 3, which requests relief from Section 34-934, note 10 that requires 50,000 square foot of commercial uses to permit five (5) dwelling units in a Commercial Planned Development containing 3,850 of commercial uses is APPROVED.

#### SECTION C. MASTER CONCEPT PLAN:

A reduced copy of the Master Concept Plan entitled "Nyman - CPD" 7/14/96, is attached and incorporated into this resolution by reference.

#### SECTION D. FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval or the requested rezoning:

1. The proposed uses, as conditioned, ~~are~~ / are not appropriate for the site and no changed or changing conditions make approval of this rezoning request inappropriate.
2. As conditioned, the CPD rezoning and approved deviations:
  - (A) ~~will not have~~ / will have an adverse impact on the intent of the Land Development Code
  - (B) ~~are~~ / are not consistent with the goals, objectives, policies and intent of the Lee Plan and with the densities, intensities, and general uses set forth in the Lee Plan specifically Policies 5.1.5, 6.1.2, 6.1.5, and 18.2.1.
  - (C) ~~meet or exceed~~ / do not meet all performance and locational standards set forth for the proposed uses.
  - (D) ~~are compatible~~ / are not compatible with existing or planned uses, and are ~~not~~ contrary to the public health, safety or welfare and will not cause damage, hazard, nuisance or other detriment to persons or property.
  - (E) ~~do not place an undue burden~~ / place an undue burden upon existing transportation facilities, or other facilities or services.

(F) ~~will comply~~ / will not comply with all applicable general zoning provisions and supplemental regulations pertaining to the uses set forth in the Land Development Code.

(G) ~~enhance~~ / do not enhance the achievement of the objectives of the CPD rezoning, and promote and preserve the protection of the public health, safety or welfare.

3. Urban services, as defined in the Lee Plan, ~~are or will~~ / will not be available and adequate to serve the proposed uses.
4. The conditions imposed on the CPD zoning and the approved deviations are reasonably related to the impacts on the public's interest created by or expected from the proposed uses, and, in conjunction with other land development regulations, will protect the public's interest, health, safety and welfare.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

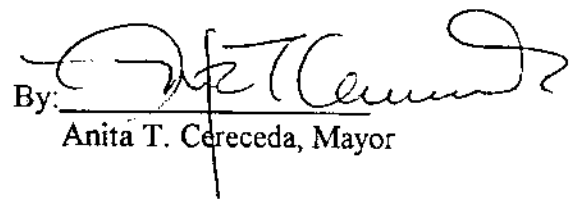
Anita T. Cereceda	<u>Yes</u>
Ted FitzSimons	<u>Yes</u>
William (Rusty) Isler	<u>Yes</u>
Garr Reynolds	<u>Yes</u>
Ray Murphy	<u>No</u>

DULY ADOPTED this 18th day of November, 1996.

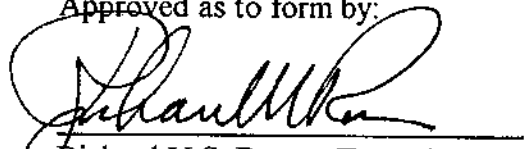
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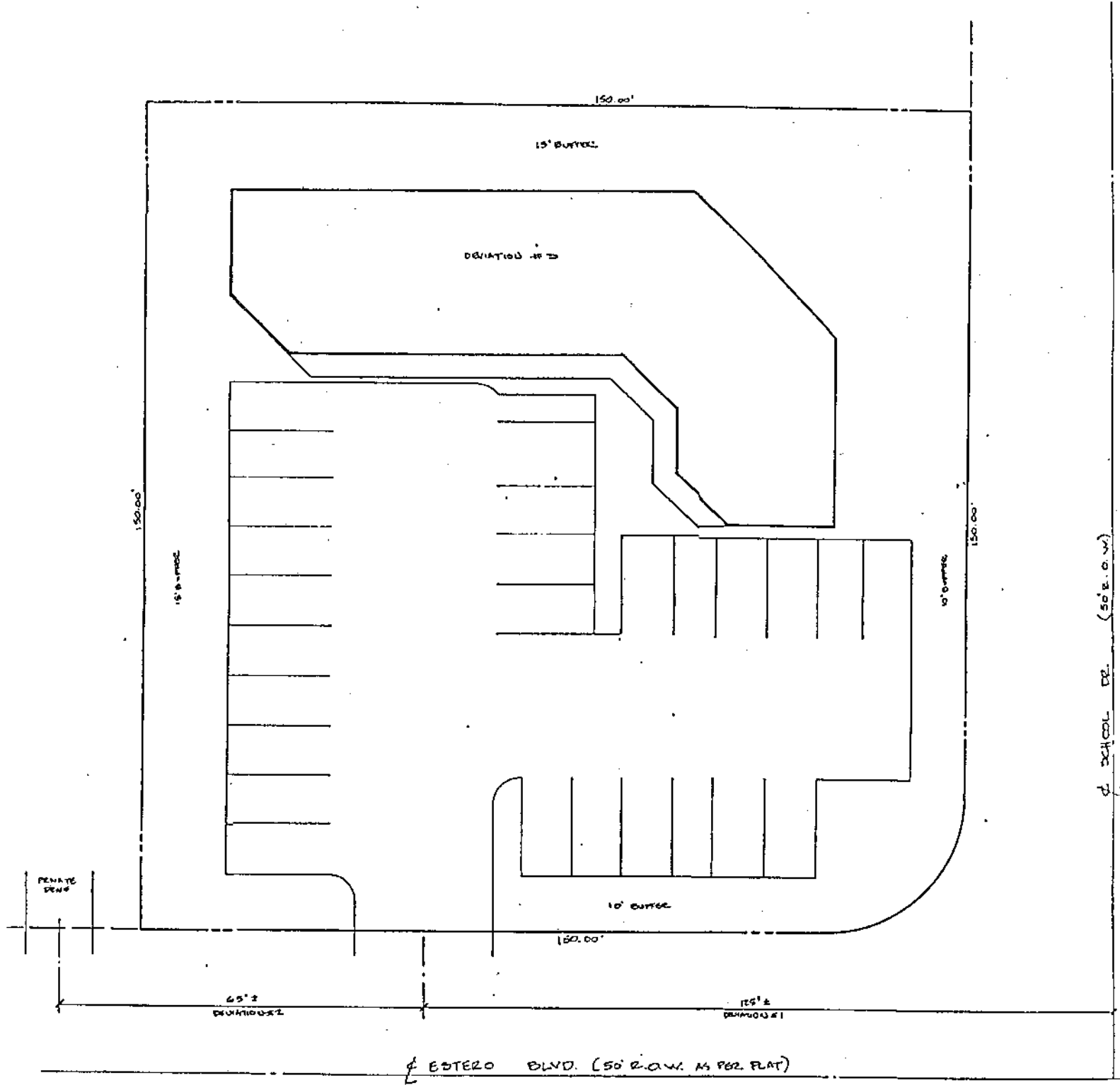
By:   
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Anita T. Cereceda, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney



NYMAN - C.P.D.

7-14-96