



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: CPD Rezoning

CASE NUMBER: DCI 20230090

CASE NAME: Rezoning of 6.02 acres landward of the 1978 Coastal Construction Control Line (CCCL), located at 275/322 Estero, 200 Estero, 192 Estero Common Element only, 142 Estero, 171-191 Estero, 251-281 Estero, and 309 Estero, from Commercial Planned Development (CPD) and Commercial Resort (CR) to CPD.

LPA

HEARING DATE: November 12, 2024 at 9:00 AM

STAFF

RECOMMENDATION: Denial

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Fred Drovdlc, AICP/JABO LLC, Bill Waichulis

Request: To rezone 6.02 acres from CPD and CR to CPD to allow the development of a new 40-unit hotel/condominium, reconstruction of a duplex, and conversion of the spa in White Sands to four hotel rooms.

Subject property: Exhibit A – Adopted Master Concept Plan

Physical Address: **309, 275/322, 251-281, 200, 171-191, and 142 Estero Blvd, and 192 Estero Blvd Common Element only**

STRAP #: 24-46-23-W1-0070D.028A (309 Estero Blvd),
24-46-23-W1-00700.0340 (275/322 Estero Blvd),
24-46-23-W1-00700.0290 (251-281 Estero Blvd),
24-46-23-W1-00700.0330 (200 Estero Blvd),
24-46-23-W1-00700.0320 (171-191 Estero Blvd),
24-46-23-W1-03700.00CE (142 Estero Blvd), &
24-46-23-W1-04100.00CE (192 Estero Blvd CE only)

FLU: Mixed Residential

Zoning: Commercial Planned Development & Commercial Resort

Adjacent zoning and land uses:

North: CPD, Mixed Residential

South: ENVIRONMENTALLY CRITICAL (EC), Recreation

East: CPD, RM, & RESIDENTIAL PLANNED DEVELOPMENT (RPD), Mixed Residential

West: RESIDENTIAL MULTIFAMILY (RM), Mixed Residential, and COMMUNITY FACILITY (CF), Recreation

II. BACKGROUND AND ANALYSIS

Background:

JABO LLC, owner or agent of 275/322 Estero Blvd, 200 Estero Blvd, and the common element of 192 Estero Blvd, known as Pink Shell Resort, is requesting a CPD rezoning, to rezone multiple properties from CPD and CR to CPD. This rezoning will combine the existing Pink Shell CPD with two new properties for a total of 6.02 acres, all landward of the CCCL.

The original Pink Shell rezoning was in 1982 (Z-82-170). Since that time, several modifications to the CPD have been adopted. This rezoning will add one property, 309 Estero Blvd, which previously contained a single-family residence and is zoned CR. The CPD request proposes a new 40-unit hotel/condominium on the bayside property closest to Bowditch Point Park; reconstruction of a duplex, on the easternmost property on the gulfside; and redevelopment of the spa facility in the White Sands Hotel, to create four new hotel units.

Analysis:

The Pink Shell resort site currently contains several resort developments which include buildings known as White Sands, Sanibel View, and Captiva Villas. Previously there was also a duplex and a cottage which provided housing for Pink Shell staff, these were destroyed in the storm. There is also a marina with 41 wet slips with 39 allowed as live-aboard slips and a dock master building as well as parking lots for guests and employees. There are 195 hotel/motel resort rooms and prior to Ian there were 3 units in the cottage and duplex as well a single-family residence. The first rezoning for this property was approved by Lee County in 1982 by R-82-170, with multiple amendments adopted by the County and the Town since then.

This request proposes several changes that will impact different parts of the resort. The most notable component is the proposal for an additional resort building with 40

resort units. That structure will be on the bay side of Estero Boulevard on the parcel closest to Bowditch Point Park. It is proposed to be a six story building (5 stories over one story of at-grade parking) and 60 feet over base flood elevation. The applicant has proposed side setbacks of 10 feet and proposed front and rear setbacks of 15 feet. The previously approved CPDs included height and setback modifications on each individual building, with the tallest building at 95 feet above BFE. This CPD will include height and setback modifications for the newly proposed buildings that are discussed in the deviations section of this staff report.

The CPD also proposes several additional but less noticeable changes. The White Sands Resort building currently contains a spa facility which will be replaced with four resort units. A residential duplex structure is also proposed in the same location as the previous duplex. The applicant is also proposing setback deviations for the duplex unit.

Prior to the storm the Pink Shell CPD property included a duplex and a cottage unit, east of Gulfshore Court. An additional property, 309 Estero, was purchased by JABO LLC, and is proposed to be included in the CPD. Of the two single family and one duplex, only the duplex is proposed for reconstruction, the other two residential units are not. The change from pre-storm units to proposed units are shown in Table 1 and 2.

Table 1: Gulfside Parcels Existing and Proposed Uses

Building	Existing Density/Intensity	Proposed Density/Intensity	Parcel(s)
Restaurants	5,450 sf	5,450 sf	24-46-23-W1-00700.0330
Conference	1,150 sf	1,150 sf	
Ballroom	2,104 sf	2,104 sf	
Fitness Facility	900 sf	900 sf	
Spa	6,033 sf	0 sf	
Pool Bar	1,000 sf	1,000 sf	
Retail (accessory)	1,400 sf	1,400 sf	
Rooms (White Sands, Captive Villas and Sanibel View Villas)	195 Units	199 Units (4 units per 6,000 sf conversion of spa)	24-46-23-W1-00700.0330 24-46-23-W1-00700.037A 24-46-23-W1-03700.00CE
Duplex and Cottage lot	3 Units	2 Units	24-46-23-W1-00700.0330

Table 2: Bayside Parcels Existing and Proposed Uses

Building	Existing Density/ Intensity	Proposed Density/ Intensity	Parcel(s)
Boutique hotel/condo	Employee parking lot	40 Units (1 unit per 309 Estero and 1 per duplex and cottage lot)	24-46-23-W1-00700.0340
Boat Slips	41	41	24-46-23-W1-00700.0340
Liveaboards	39	39	24-46-23-W1-00700.0320 24-46-23-W1-00700.0290
Dock Master Building	500 sf	500 sf	
Residential with dock	1 Unit (309 Estero Blvd purchase)	-	24-46-23-W1-0070D.028A
	Existing dock	-	

The proposed CPD increases the number of units on the combined CPD parcels by 42. Applying the underlying Future Land Use of Mixed Residential and using the maximum allowable equivalency factor of 2 would result in a total of 72 hotel units. The proposed total number of units on the entire CPD property with the proposed amendments is 241. However, the Pink Shell CPD allowed the 195 hotel units and the two single family units were allowed also. Because the two single family units will not be rebuilt, application of the equivalency factor of 2 results in the creation of 4 units, which can account for the new units in White Sands. Using this evaluation, the proposed development exceeds the allowed number of hotel units by 40, the number of hotel units proposed for the new boutique hotel.

The development currently contains 241,900 square feet of floor area, including the hotel buildings and the dock master building. The proposed boutique hotel would add another 78,000 square feet. This would result in an FAR of 1.2, which is allowed in the Mixed Residential future land use. The applicant is requesting a deviation to exclude the under-building parking from the FAR calculation for the new building. If this deviation request is granted, it will reduce the FAR of the proposed development to 1.0.

Neighborhood Compatibility:

The existing buildings in this portion of the Town are mostly the Pink Shell Resort buildings which are allowed a maximum height of 95 feet above BFE. The existing Pink Shell resort buildings are 11 stories, six stories, and eight stories tall.

The nearby uses that are not part of the Pink Shell CPD include Pink Shell Vacation Villas which is seven stories tall, including parking on the ground floor, and Estero Island Beach Villas which is eight stories. Adjacent to the proposed new hotel building, there is also an uninhabited triplex. There are no approved plans for that property at this time.

Uses in the neighborhood are condominium, resort, and marina, as well as the park at Bowditch Point Park.

Requested Deviations:

- 1) Deviate from LDC §10-416(d)(2) Table 10-8 requiring a Type C buffer with a wall when a proposed commercial parking lot is next to a multifamily residential property; to allow a Type C buffer with no wall to allow visibility to the redesigned public boardwalk.**

JUSTIFICATION: Placing a wall where a public boardwalk that is to be park-like and a public fishing pier would take away from the from the public access easement that is meant to be a well landscaped, enticing walk to the boardwalk along Matanzas Pass on the back of the building. A wall would not enhance this experience but detract.

Staff Comment: The type C buffer is 15 feet wide and requires 5 trees and 18 shrubs per 100 linear feet. If more screening is desired in this location, staff recommends requiring canopy trees in the type C buffer to create more screening between the

uses than palm trees will provide.

- 2) Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 15 feet as a side setback; to allow a 10-foot side setback in CPD Area #2 for the two new homes/short-term rental units are proposed.**

JUSTIFICATION: The lot in CPD area #2 is small, 0.17 acres, and historically had inadequate setbacks and buffers when it was a duplex and cottage that were less than the 10 feet proposed. According to the best we can estimate the side setbacks ranged from 0-10 feet to the north (towards Estero Blvd) and 13 feet to the south (beach). The proposed 10-foot setbacks will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback.

Staff Comment: The decrease in side setbacks at this location are unlikely to have an impact on the adjacent properties. It appears that the duplex structure and cottage on that parcel were located similarly prior to the storm.

- 3) Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 20 feet as a rear setback; to allow a 15-foot rear setback.**

JUSTIFICATION: The CPD boundary Area #2 is only 0.17 acres and previously housed three units. The new request is for two units and meeting the required rear and side setbacks would make the lot unbuildable for two units. The 15-foot rear setback will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback.

Staff Comment: The decrease in rear setback at this location are unlikely to have an impact on the adjacent properties. It appears that the duplex structure and cottage on that parcel were located similarly prior to the storm.

- 4) Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 15 feet as a side setback; to allow a 10-foot side setback in CPD Area #4 for the new 40-unit hotel/condo building.**

JUSTIFICATION: The lot in CPD area #4 does not require buffers but does require 15-foot setbacks per the LDC. We are proposing a Type B buffer along the side setbacks to offset the request to have a building with only 10-foot setbacks. The proposed 10-foot setbacks will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback. Historically there were no setbacks or buffers for the surface parking lot where the new building is proposed. To the south is a dilapidated multi-family structure that will be razed, and new multi-family structure is proposed in a CPD that is in progress. To the north is Bowditch Point Park maintenance area and employee parking. The buffers will improve current conditions as will the 10-foot setback. The uses to the north and south will not be negatively impacted with the 5-

foot reduction as offset with buffering.

Staff Comment: The proposed decrease in side setbacks will decrease views of the bay by 5 feet on each side. A 10-foot setback is not a lot of space to fit five trees per 100 linear feet and a double hedge. In this instance only palms can fit in that space and installation of hedges may diminish views of the bay from ground level. The applicant should choose appropriate hedges to ensure visibility is not diminished.

- 5) Deviate from LDC §34-675(b) that requires a maximum height of 40 feet above base flood elevation and no taller than three stories; to allow a height of:**
- **60 feet as measured from one foot over base flood elevation (BFE+1) or**
 - **Five (5) stories (six (6) stories over ground level parking).**

JUSTIFICATION: The permitted height in the CR District is a maximum of 40 feet above base flood elevation. The height is significantly shorter than the condo/hotel and resort buildings across Estero Boulevard.

Staff Comment: The current CPD has a maximum allowed height on the gulf side of the property of 95 feet and one of the existing resort buildings is approximately that tall. This proposed building is on the bayside of the Pink Shell property and will have different impacts. The neighbors across Estero, at Pink Shell Vacation Villas (seven stories) and the adjacent property at 131/133 Estero Blvd, may be impacted by this additional height.

- 6) Deviate from LDC §34-633 where the gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking; to eliminate counting the ground level covered parking area towards FAR and be significantly below the required 1.2 FAR for this subject property.**

JUSTIFICATION: The CR district limits the FAR of properties to a maximum of 1.2. The area of the subject property landward of the 1978 Lee County CCCL that is in the CPD boundary is 6.02 acres or 262,231 square feet. The existing White Sands, Sanibel View, Captiva Villas and the dock master building account for 241,900 square feet of floor area. The additional boutique hotel building accounts for 78,000 square feet of floor area. The total floor is 319,900 square feet resulting in an FAR of 1.2. However, the applicant has requested a deviation to eliminate counting the first-floor parking areas in the FAR calculation. If the deviation is approved the floor area is reduced for the existing White Sands, Sanibel View and Captiva Villas and the dock master buildings floor area to 195,500 square feet. The additional boutique hotel building is reduced to 65,000 square feet of floor area. The reduced total floor area for the CPD is 260,500 square feet resulting in an FAR of 1.0. It is our understanding that the Town staff, LPA and Council have moved towards future LDC amendments making this request permanent thus the request meets the intent of the will of the Town.

Staff Comment: This type of request has been approved previously.

Existing Deviations on Pink Shell Resort, approved for **Captiva Villas - Resolution 01-26**:

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:
 - (a) 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.
 - (b) The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
 - (c) Parking stripes will not be required on the alternative surface; however, parking bumpers must be used to identify the required number of parking spaces.

Findings and Conclusions:

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist. However, this is a CPD and the addition of the property owned by JABO LLC and its subsidiaries, is a reasonable request.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

Staff response: The duplex and cottage which were part of the Pink Shell Resort and the single family residence at 309 Estero Blvd were destroyed by Ian.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) 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.

Staff response: The proposed development is in compliance with the intensity of the district, whether the FAR is counted for the ground floor parking or not, the property will not exceed the allowed 1.2 FAR. If we were to apply density to the use, it would exceed the density. However, the applicant is requesting 40 additional resort units above the current allowed number of resort units. The new structure will be designed to current building and flood requirements which is supported by the comprehensive plan.

The development is consistent with several policies:

POLICY 1-A-1 *Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.*

POLICY 7-D-5 HIDDEN-PATH SYSTEM. HIDDEN-PATH SYSTEM: *The town shall support the creation of a quiet network of "hidden paths" running on the Bay side parallel to Estero Boulevard. This network would provide an alternative to walking and cycling along Estero Boulevard (as described further in the Community Design Element). Initial land acquisition shall begin in 1999.*

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The proposed development will meet performance standards set forth in 34-2031. There are no special location standards for hotels.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Staff response: The request should not have an impact on environmentally critical areas and natural resources.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Staff response: The existing Pink Shell resort has operated successfully for a number of decades, without causing nuisance. The site of the duplex previously contained a duplex and a cottage, without known incidence. It is not expected that this use will cause hazard or nuisance.

(12) 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.

Staff response: This use in this location will not likely to place an additional burden on the transportation network or other facilities and services. Impact fees will be required at time of development order.

(13) For planned development rezonings, see [§ 34-216](#) for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see [§ 34-216](#) of this chapter for additional findings.

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: The proposed resort use is appropriate in this location, it is in the Mixed Residential Future land use.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: The proposal is in compliance with these policies.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: Not applicable.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: The request for additional height is proposed as part of the planned development rezoning process. The requested height appears to be similar to the surrounding uses both the Pink Shell Resort and the surrounding resort and condominium buildings. However, the proposed building is not adjacent to any buildings and therefore additional height may not be appropriate.

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: The proposed development will be required to pay impact fees at time of development. Additionally, the developer has proposed a variety of policies which will function to decrease the number of vehicles at the hotel.

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and
Staff response: The requested deviations allow the development of the site as requested by the applicant. It is unclear if they enhance the development.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

Staff response: The proposed deviations do not increase risk, hazard, or injury to the public.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response: The deviations are not a detriment to the public interest.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: The deviations are consistent with the comprehensive plan.

I. RECOMMENDATION

Staff finds that the CPD with deviations does not meet the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends denial of DCI20230246 with the attached conditions.

II. 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 A.
3. The approved uses are limited to those detailed on the attached Exhibit B, Schedule of Uses.
4. Architectural design of the bayside Boutique Hotel shall be substantially in compliance with Exhibit D, renderings.
5. (Condition 7 of Resolution 10-06, amended as follows) Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.
6. The applicant must provide a landscaping plan and planting schedule that is in compliance with the approved MCP or the LDC Chapter 10, Division 6 Open Space, Buffering and Landscaping.
7. A dune restoration plan must be submitted to the Town of Fort Myers Beach, for approval and will be subject to the following conditions:
 - a. Location of the restoration area will be generally as shown on the MCP.
 - b. Plant species will consist of a mix of sea oats, beach panic grass, railroad vine, cocoplum, seagrasses and beach sunflower in lines planted at 1.5 feet on center
 - c. To allow the plants to become established, the vegetation will be temporarily fenced with ropes and bollards or a similar fencing. Orange construction fence is prohibited.
 - d. No more than the existing dune walkover will be permitted to provide beach access.
 - e. The beach vegetation project will be coordinated with and integrated with any ongoing beach restoration or renourishing project that is underway at the time of development.
 - f. The dune plan must identify the location, behind the dune line, for chickee huts, beach furniture and rental equipment (personal watercraft, chairs etc.) as required by the Town's Sea Turtle Ordinance found in Section 32, Article V, Section 32-113.

Exhibits:

A – Master Concept Plan

B – Schedule of Uses

C – Deviations and Justification from applicant

D – Renderings

E – Applicant Narrative

F – Application

G – Historical Zoning Approvals