



***Town of Fort Myers Beach***  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**STAFF REPORT**

**TYPE OF CASE:** Special Exception  
**CASE NUMBER:** FMBSEZ2010-0006  
**LPA HEARING DATE:** May 10, 2011  
**LPA HEARING TIME:** 9:00 am

**I. APPLICATION SUMMARY**

**Applicant:** Merlo's Bar and Grill, LLC

**Request:** Special Exception in the DOWNTOWN zoning district to allow consumption on premises of alcoholic beverages in an outdoor seating area within 500 feet of a dwelling unit under separate ownership

**Subject property:** Venetian Garden  
Plat Book 6 Page 70  
Block B  
Lot 12

**Physical Address:** 1365 Estero Blvd Fort Myers Beach, Florida 33931

**STRAP #:** 19-46-24-W4-0060B.0120

**FLU:** Pedestrian Commercial

**Zoning:** DOWNTOWN

**Current use(s):** Restaurant with a 2COP liquor license

**Adjacent zoning and land uses:**

North: Single Family Residential  
SANTOS  
Pedestrian Commercial

South: Hotel/Motel  
DOWNTOWN  
Pedestrian Commercial

East: Commercial Parking lot  
DOWNTOWN  
Pedestrian Commercial

West: Commercial Parking lot  
DOWNTOWN  
Pedestrian Commercial

## **II. BACKGROUND AND ANALYSIS**

### Background:

The subject property is located at 1365 Estero Boulevard approximately ¼ mile south of the Sky Bridge on the left side of Estero Boulevard. The subject property is located just south of the Times Square area (i.e. the Downtown Core area) as described in the Comprehensive Plan.

The existing use on the property is a restaurant in possession of an active and valid (at the time of the Staff Report) state issued 2COP liquor license which permits beer and wine sales in conjunction with food sales and service.

The original administrative approval, COP2008-0001, and is attached as **Exhibit A**.

### Analysis:

The regulations of the DOWNTOWN zoning district as found in LDC Section 34-678, encourage restaurants to provide outdoor seating areas located on porches or patios, largely between enclosed buildings and the street.

This vicinity is one of the most intensive commercial areas of the Town, and with frontage on Estero Boulevard it is located generally away from the intensely residential areas of the island. The subject property is located in the Downtown zoning district within walking distance to Times Square and Old San Carlos Boulevard, where many other establishments, generally restaurants with bars, serve alcohol on the premises and include outdoor seating areas and is directly across the street from a destination resort location with a popular bar and beach access. Thus the request for outdoor consumption on premises is compatible and appropriate at this location.

The sidewalks on both sides of Estero Boulevard, the availability of commercial parking lots, and the popular use of the beach help to attract beach-going pedestrians to the area. The applicants' restaurant is among a large number of commercial and retail uses in this part of the Town, several of which have outdoor

seating near the beach. The presence of visiting pedestrians transitioning between parking areas, retail stores, restaurants, the beach, and motels, is a long-established custom that will not be altered by approval or denial of the current request. The immediate vicinity is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area does not require that it be transformed from an intensively commercial area into a primarily residential district. Furthermore the Comprehensive Plan specifically contemplates that the Times Square area (i.e. Downtown Core Area) will include a more intensive mix of commercial activities including outdoor uses.

The applicant indicates their intent to operate between the hours of 7:00 am and 12:00 midnight, hours that are just within the allowable external limits set forth in Town Ordinance 96-06, which prohibit service between 2:00 am and 7:00 am throughout Fort Myers Beach. Although the applicant has provided these operation hours (7:00 am – 12:00 midnight) in order to limit the use to these hours (or any other hours other than 7:00 am to 2:00 am daily) the Town Council may find that a condition is necessary to protect the public health, safety, and welfare. Further, while the applicant has not requested music or any other audible outdoor entertainment uses, Staff suggests that due the subject property's location proximity to a residential neighborhood and easy access to Fort Myers Beach, that Town Council take the opportunity to condition potential future audible entertainment hours in addition to the standard operating hours.

The existing deck proposed for outdoor seating and consumption and dining is approximately 470± square feet. The restaurant use generates a need for 6 parking spaces per LDC Chapter 34-2020 and the applicant provides 4 parking spaces on the subject property and has a joint use agreement with Norm's Parking lot adjacent to the subject property to provide the remaining 2 required spaces in that lot. Condition #2 of the original administrative approval, COP2008-0001 (**Exhibit A**), stipulates the following:

*If the restaurant is expanded onto the outdoor deck area or elsewhere, with or without service of alcoholic beverages for consumption on premises additional parking will be required.*

Staff has calculated a need of an additional 4 parking spaces to fulfill the expanded outdoor dining and consumption area. **Exhibit B** shows the expanded joint use parking arrangement with Norm's Parking lot adjacent to the subject property.

In the past, Lee County and the Town issued location-specific approvals for alcoholic beverage uses which sometimes contained limitations on the number of seats and the type and/or series of license, possibly in an effort to limit potentially adverse effects on the neighboring properties and possibly to aid with enforcement issues involving unauthorized expansions. Staff does not recommend conditions be included limiting the number of seats or the type and/or series of state beverage license. The seating area can be limited by reference to the applicant's site plan, which clearly delineates the seating area. Changes to the types of seats used in the seating area or amendments to the building code could allow a somewhat different

seating capacity within the same floor area in the future. A future owner may find it economically advantageous to acquire a different type or series of state beverage license or use it in conjunction with a full restaurant use. Further, the LDC does not distinguish between establishments that serve beer, establishments that serve beer and wine, and establishments that serve beer, wine, and liquor, therefore Staff has no basis in policy to develop theories or evidence to support the notion that locations serving any combination of the three should be regulated differently by the Town.

Findings and Conclusions:

1. *Whether there exist changed or changing conditions [that] make approval of the request appropriate.*

The Comprehensive Plan notes in the Consensus on Commercial Uses: “The present concentration of commercial uses in the Times Square area is good for Fort Myers Beach. Despite severe congestion during peak season and a general seediness that had been developing, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today’s floodplain regulations. The recent CRA improvements have sparked a renewed interest in Times Square among most islanders and has spurred a healthy movement to upgrade existing buildings.”

As contemplated in the Comprehensive Plan, the Times Square/Downtown area has continued to emerge as a vibrant urban core for the Town, and as such the area can support a more intensive variety of uses which is consistent with the applicant’s request.

2. *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

The subject property is located in what the Comprehensive Plan terms the Downtown Core. The Comprehensive Plan describes a vision for this area that “boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an ‘Old Estero Island’ character to the buildings.” The applicant’s request for outdoor consumption on premises is in fitting with the vision for the area as described above.

Further, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Downtown Core/Times Square area as a “nucleus of commercial and tourist activities” with pedestrian oriented commercial uses that enhance the experience of both the resident and visitor. Again, the applicant’s request is in keeping with this vision, by providing an additional venue for the enjoyment of the unique outdoor environment of Fort Myers Beach.

3. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The very nature of this application indicates that the requested use of outdoor consumption on premises is not a use allowable by right on the subject property. It is however, a use permitted by special exception. (See Section 34-1264(a)(2)).

The applicant's request is appropriate at this site due to the subject property's location in the Downtown Core Area, and is in keeping with the goals, objectives, policies and intent of the Comprehensive Plan which describes a vibrant tourist commercial district in the Downtown Core.

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

The proposed outdoor consumption application will have virtually no negative effects on the environmentally critical areas and natural resources of Fort Myers Beach as the subject property and proposed deck in question are located in an established commercial district, landward of the coastal construction line(s) and far from environmentally critical areas and sensitive natural resources.

5. *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 subject property and the area immediately surrounding it, is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area does not require that it be transformed from an intensively commercial area into a primarily residential district. It possesses a vibrant mix of uses and such Staff feels the applicant's request is compatible and appropriate within its neighborhood.

6. *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

The outdoor consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including but limited to 34-678(7)(e)(1), 34-678(7)(e)(4), and 34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

### **III. RECOMMENDATION**

The appropriate limitations on an outdoor seating area for consumption on premises that is allowed by special exception are for Town Council to determine through the hearing process, during which process they should find that the following conditions are reasonably related to the special exception requested.

With consideration to the current and existing conditions, Staff recommends **APPROVAL** of the requested special exception to allow the consumption on premises of alcoholic beverages in a location providing outdoor seating areas within 500 feet of dwelling unit under separate ownership.

If the Town Council chooses to approve the requested special exception, staff recommends that approval be subject to the following conditions:

1. The area of the subject property used for outdoor consumption on premises must be confined entirely to the 470± square foot existing deck, illustrated by **Exhibit C**.
2. Sales, service, and consumption of alcoholic beverages outdoors must not begin earlier than 7:00 am and must end no later than 12:00 midnight each day.
3. Music and other audible entertainment are prohibited before 11:00 AM and after 9:00 PM seven days a week and must comply at all times with applicable Town noise ordinances.
4. Signage must be installed at Norm's Parking lot indicating which spaces are reserved exclusively for the subject property.

### **IV. CONCLUSION**

Regulations for the DOWNTOWN zoning district encourage outdoor dining, and many restaurants within the district have capitalized on the vision of the Comprehensive Plan in accordance with these regulations and are providing outdoor seating areas where alcoholic beverages are served as a part of a menu of full-course meals as required by LDC Section 34-1264(b)(2).

The area surrounding the subject property is one of the most intensive commercial areas of the Town, and aside from a minimal number of residential units, it is located generally away from the intensely residential areas of the island. The subject property is located in the Downtown zoning district within walking distance to Times Square and Old San Carlos Boulevard, where many other establishments, generally restaurants with bars, serve alcohol on the premises and include outdoor seating areas. Thus the request for outdoor consumption on premises is appropriate at this location. When considering the context and compatibility of the subject property's requested use along with the applicant's provided hours of operation and tempered with the conditions listed previously, Staff finds that the outdoor consumption on premises is a compatible and appropriate use.

If Town Council finds that the requested use is contrary to the public interest or the health, safety, comfort, convenience, and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-88, Town Council should deny the request as provided in LDC Section 34-88(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience, or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested special exception. Staff has recommended conditions for the Town Council's convenience.

Staff recommends **APPROVAL** of the requested special exception, as conditioned.

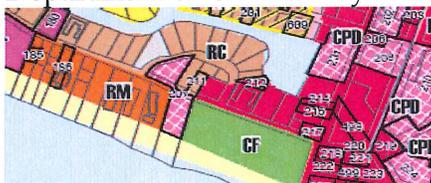
Exhibits:

- A: COP2008-0001
- B: Parking Agreement
- C: Building Plan
- D: Subject Property Survey

Case # SEZ2010-0006  
 Planner Chapman

Date Received \_\_\_\_\_  
 Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
 Department of Community Development



Zoning Division

**Application for Public Hearing**

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

Project Name: <u>Merlo's Bar &amp; Grill, LLC.</u>
Authorized Applicant: <u>USA Merlo</u>
LeePA STRAP Number(s): <u>19-40-24-W4-0060B.0120</u>

<b>Current Property Status:</b>
Current Zoning: <u>DOWNTOWN</u>
Future Land Use Map (FLUM) Category: <u>Pedestrian Commercial</u>
Platted Overlay? <u>no</u> <input checked="" type="checkbox"/> yes <input type="checkbox"/> FLUM Density Range:

Action Requested	Additional Form Required
<input checked="" type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

**Town of Fort Myers Beach**  
 Department of Community Development  
 2523 Estero Boulevard  
 Fort Myers Beach, FL 33931  
 (239) 765-0202

**PART I – General Information**

**A. Applicant:**

Name(s):	USA Merlo		
Address: Plus Street:	ESTERO BOULEVARD		
City:	Fort Myers Beach	State:	FL Zip Code: 33931
Phone:	239 210 8344		
Fax:			
E-mail address:	merlosbargnille@live.com		

**B. Relationship of applicant to property (check appropriate response)**

<input checked="" type="checkbox"/>	Owner (indicate form of ownership below)		
<input type="checkbox"/>	Individual (or husband/wife)	<input checked="" type="checkbox"/>	Partnership
<input type="checkbox"/>	Land Trust	<input type="checkbox"/>	Association
<input type="checkbox"/>	Corporation	<input type="checkbox"/>	Condominium
<input type="checkbox"/>	Subdivision	<input type="checkbox"/>	Timeshare Condo
<input type="checkbox"/>	Authorized representative (attach authorization(s) as Exhibit AA-1)		
<input type="checkbox"/>	Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)		
<input type="checkbox"/>	Town of Fort Myers Beach (Date of Authorization: _____)		

**C. Agent authorized to receive all correspondence:**

Name:	USA Merlo		
Mailing address: Street:	Plus ESTERO BOULEVARD		
City:	Fort Myers Beach	State:	FL Zip Code: 33931
Contact Person:	USA Merlo		
Phone:	239 210 8344	Fax:	
E-mail address:	usa_tour_70@yahoo.com		

**D. Other agents:**

Name(s):			
Mailing address: Street:			
City:		State:	Zip Code:
Phone:		Fax:	
E-mail address:			

Use additional sheets if necessary, and attach to this page.

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

### PART II – Nature of Request

**Requested Action (check applicable actions):**

<input checked="" type="checkbox"/> Special Exception for: <i>Outdoor Seating COP</i>
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

### PART III – Waivers

**Waivers from application submittal requirements:** Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director's approval(s) as Exhibit 3-1.

Code Section Number	Describe Item

### PART IV – Property Ownership

<input type="checkbox"/> <b>Single owner</b> (individual or husband and wife)
Name: <i>Norman Primeau</i>
Address: <i>920</i> Street: <i>San Carlos Drive</i>
City: <i>FNB</i> State: <i>FL</i> Zip Code: <i>33931</i>
Phone: _____ Fax: _____
E-mail Address: _____

<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

**PART V – Property Information**

**A. Legal Description of Subject Property**

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name: Venetian Garden
Plat Book Number: 6     Page: 70     Unit:     Block: B     Lot: 12
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

**B. Boundary Survey**

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida.
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**C. STRAP Number(s):**

19-46-24-WA-0060B.0120
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**D Property Dimensions:**

Area: 59280 square feet .13 acres
Width along roadway: 30 feet     Depth: 120 feet

**E. Property Street Address:**

1305 Estero Blvd Fort Myers Beach FL 33931
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**F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):**

approx 1/4 mile south of the sky bridge across the street from the Lanikai
Attach Area Location Map as Exhibit 5-3

**G. Property Restrictions (check applicable):**

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

**H. Surrounding property owners:**

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
Attach two sets of mailing labels as Exhibit 5-7
Attach a map showing the surrounding property owners as Exhibit 5-8

**I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)**

<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input checked="" type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

**J. Zoning: (see official zoning map, as updated by subsequent actions)**

<input type="checkbox"/> RS (Residential Single-family)	<input type="checkbox"/> CM (Commercial Marina)
<input type="checkbox"/> RC (Residential Conservation)	<input type="checkbox"/> CO (Commercial Office)
<input type="checkbox"/> RM (Residential Multifamily)	<input type="checkbox"/> CB (Commercial Boulevard)
<input type="checkbox"/> VILLAGE	<input type="checkbox"/> SANTINI
<input type="checkbox"/> SANTOS	<input checked="" type="checkbox"/> DOWNTOWN
<input type="checkbox"/> IN (Institutional)	<input type="checkbox"/> RPD (Residential Planned Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	





**EXHIBIT 4-1  
DISCLOSURE OF INTEREST FORM**

**STRAP#**

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage

2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address, and office	Percentage

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Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust and the percentage of interest.

Name and Address	Percentage

4. If the property is in the name of a GENERAL PARTNERSHIP or LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

Name and Address	Percentage

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, regardless of whether a Corporation, Trustee, or Partnership is involved, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners, and their percentage of stock.

Name, Address, and Office (if applicable)	Percentage

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

6. If any contingency clause or contract terms involve additional parties, list all individuals, or officers if a corporation, partnership, or trust.

Name and Address


For any changes of ownership or changes in contracts for purchase subsequent to the date of the application but prior to the date of final public hearing, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature \_\_\_\_\_  
Applicant  
\_\_\_\_\_  
Printed or typed name of applicant

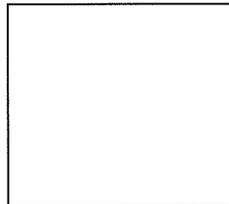
STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (or did not) take an oath.

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Typed or Printed Name of Notary

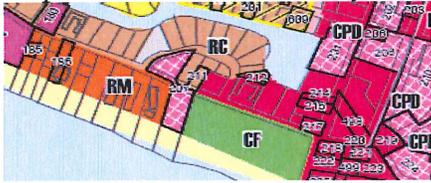
SEAL:



Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
Department of Community Development



Zoning Division

**Supplement PH-A**

**Additional Required Information for a  
Special Exception Application**

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

<b>Project Name:</b> MERIUS Bar and Grill, LLC
<b>Authorized Applicant:</b> Lisa Merlo
<b>LeePA STRAP Number(s):</b> 19-46-24-W4-0060B.0120

<b>Current Property Status:</b>
<b>Current Zoning:</b> DOWNTOWN
<b>Future Land Use Map (FLUM) Category:</b> Pedestrian commercial
<b>Platted Overlay?</b> __yes__ <u>X</u> no <b>FLUM Density Range:</b>

**Requested Action:**

<input type="checkbox"/> Use of premises in the EC (Environmentally Critical) zoning district for:
<input type="checkbox"/> Use of premises in the <u>Downtown</u> zoning district for:
<u>Outdoor Consumption on premises in conjunction w/ a restaurant</u>

PART I  
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

Requesting outdoor seating for consumption of food and alcoholic beverages on existing deck, attached to the building.
Hours of operation <del>10am to 11pm</del> 7am to 12 midnight

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

<b>The property qualifies for a Special Exception because:</b>
Limited indoor seating; many people requesting to sit outdoors to enjoy their meals.



ADMINISTRATIVE APPROVAL  
TOWN OF FORT MYERS BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
COP2008-0001

WHEREAS Dennis and Cathy Robinson, d/b/a Burgers on the Beach, with the authorization of Norman L. Primeau, Trustee of the Norman L. Primeau Trust, owner of the subject property, applied for administrative approval of consumption on premises of alcoholic beverages in conjunction with a restaurant, under the provisions of Fort Myers Beach Land Development Code (LDC) Chapter 34, Article IV, Division 5; and

WHEREAS the subject property is located at 1375 Estero Boulevard and is legally described as

**Lot 12, Block B, VENETIAN GARDENS Subdivision, as  
recorded in Plat Book 6, Page 70, Public Records of Lee  
County, Florida;**

and

WHEREAS the current zoning of the subject property is DOWNTOWN; and

WHEREAS the applicant submitted an application containing the information required by LDC Section 34-1264(c)(1); and

WHEREAS the subject property contains two (2) structures, one of which (1365 Estero Boulevard), currently houses a take-out frozen custard stand and contains no indoor seating areas, and one of which (1375 Estero Boulevard) contains indoor seating areas and is suitable for a restaurant; and

WHEREAS the application requests approval for the more northerly structure (1375 Estero Boulevard) only, as shown on the applicant's site plan; and

WHEREAS LDC Section 34-1264(a)(1) allows the director to approve administratively an application for consumption on premises in conjunction with a restaurant, provided the additional requirements of LDC Sections 34-1264(b)(2)a and 34-1264(b)(3) are met; and

WHEREAS LDC Section 34-1264(b)(2)a requires that a restaurant (1) be in full compliance with state requirements, (2) serve cooked, full-course meals, prepared daily on the premises, (3) provide beverages from a service bar only to patrons ordering meals, or in a cocktail lounge for patrons waiting to be seated at dining tables with no exterior indication that the cocktail lounge is within the

building, and (4) comply with the additional requirements of LDC Section 34-1264(k); and

WHEREAS LDC Section 34-1264(b)(3) requires that a restaurant satisfy the parking requirements contained in LDC Section 34-2020(d)(2); and

WHEREAS LDC Section 34-2020(d)(2), in conjunction with LDC Section 34-676(a), requires six (6) parking spaces for the proposed use on the subject property; and

WHEREAS the application does not request any outdoor or unenclosed seating areas for consumption-on-premises uses on the subject property; and

WHEREAS no public or private elementary school, middle school, or secondary school is located within 500 feet of the subject property; and

WHEREAS the director makes the following findings of fact:

1. All applicable standards have been met;
2. There will be no deleterious effect upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises;
3. The premises are suitable in regard to their location, site characteristics, and intended purpose;
4. All the preceding clauses introduced by "WHEREAS" are incorporated herein as findings of fact;

NOW, THEREFORE, the Director **APPROVES** the requested administrative approval of a consumption-on-premises permit,

**SUBJECT TO the following conditions:**

1. All requirements of LDC Section 34-1264(k) are incorporated herein by reference and the subject establishment must comply with these requirements at all times.
2. A minimum of six (6) lawful parking spaces must be clearly designated and provided for the use of the subject establishment either on the subject property or in accordance with the provisions of LDC Section 34-2018. The number of required spaces may be reduced to five (5) if a bicycle rack is provided on the subject property in accordance with LDC Section 34-2020(c). If the restaurant is expanded onto the outdoor deck area or elsewhere, with or without service of alcoholic beverages for consumption on premises, additional parking will be required.
3. Consumption on premises on the subject property is limited to a restaurant within the indoor area (approximately 1000 square feet) designated within the heavy black line on the floor plan attached hereto as **Exhibit A**. Any

expansion of the area designated for consumption on premises will require a new approval in compliance with all applicable requirements of the LDC at that time.

4. No outdoor areas and no areas that are less than fully enclosed on the subject property are approved for consumption on premises.
5. Alcoholic beverage consumption on premises on the subject property is approved in conjunction with a restaurant use only. Alcoholic beverage consumption on premises in conjunction with any other use, specifically including but not limited to a bar or cocktail lounge, will require a new approval in compliance with all applicable requirements of the LDC at that time.

DULY ADOPTED this 19th day of September, 2008.

By: \_\_\_\_\_

  
Frank Shockey, Ph.D., Interim Director  
Department of Community Development  
Town of Fort Myers Beach

# EXHIBIT B

SANTOS ROAD 20' PAVED

125'-0"

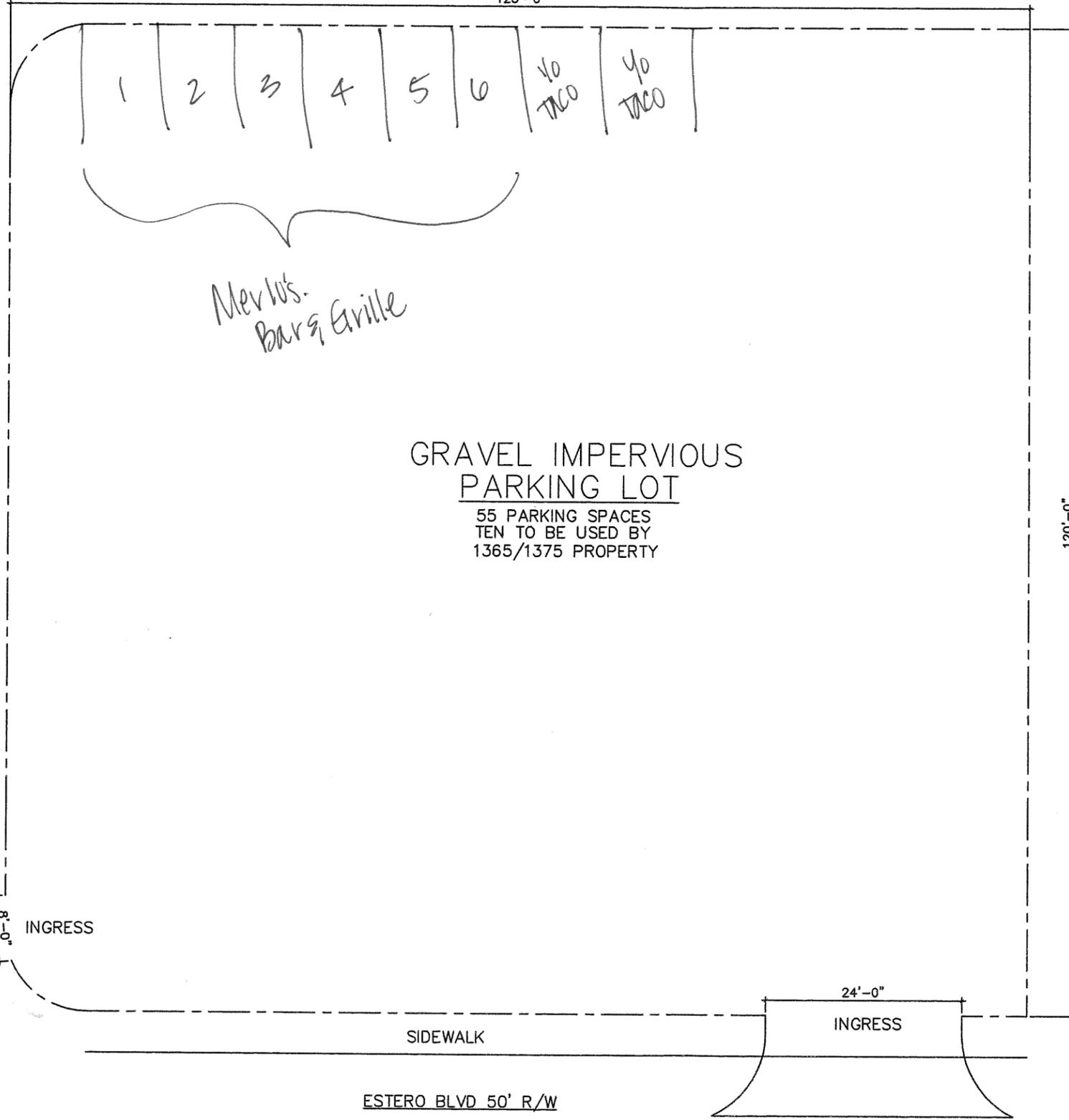


EXHIBIT ( B )

Norm's parking will provide the additional required 3 spaces necessary for SE22010-0005. Spaces will be marked accordingly.  
2/18/11 x *Norm's Parking*

BOB ROCKWELL CONSTRUCTION INC. 671 ASTARIAS CIRCLE FORT MYERS, FLORIDA 33919 TEL: (239) 565-9255 FAX: (239) 432-0113	
PRIMEAU 1397 ESTERO BLVD FORT MYERS BEACH FL. ST. # 19-46-24-W4-0060B.0100	
10 PARKING SPACES RESERVED FOR 1365/1375 ESTERO USE	
SITE PLAN PRIMEAU	
1397 ESTERO BLVD FORT MYERS BEACH, FL. STRAP # 19-46-24-W4-0060B.0100	
DRAWN IN:	3/15/05
DRAWN BY:	R.B.B.
REVIEWED BY:	B.R.
SCALE:	1/16" = 1'-0"
SHEET:	1 OF 1

**Project Scope**

The scope of this project is to add a Handicap ramp to deck and to add a Handicap bathroom on the interior of the building.

**General Notes**

1. General Contractors shall field verify all dimensions and site conditions before commencing work.
2. As a minimum, all work shall conform to the 2004 Edition of the Florida Building Code.
3. All work shall conform to applicable state and county
4. All work shall conform to the state of florida handicap law. FS 76023 (10) & the Florida Building Code Chapter 11.
5. All Structural systems and sub-components are designed to withstand 130 M.P.H. wind speed as per section 1609 of the 2004 Florida Building Code.
6. All work shall conform to the 2003 NFPA Life Safety Code 101.

**Handicap Accessibility**

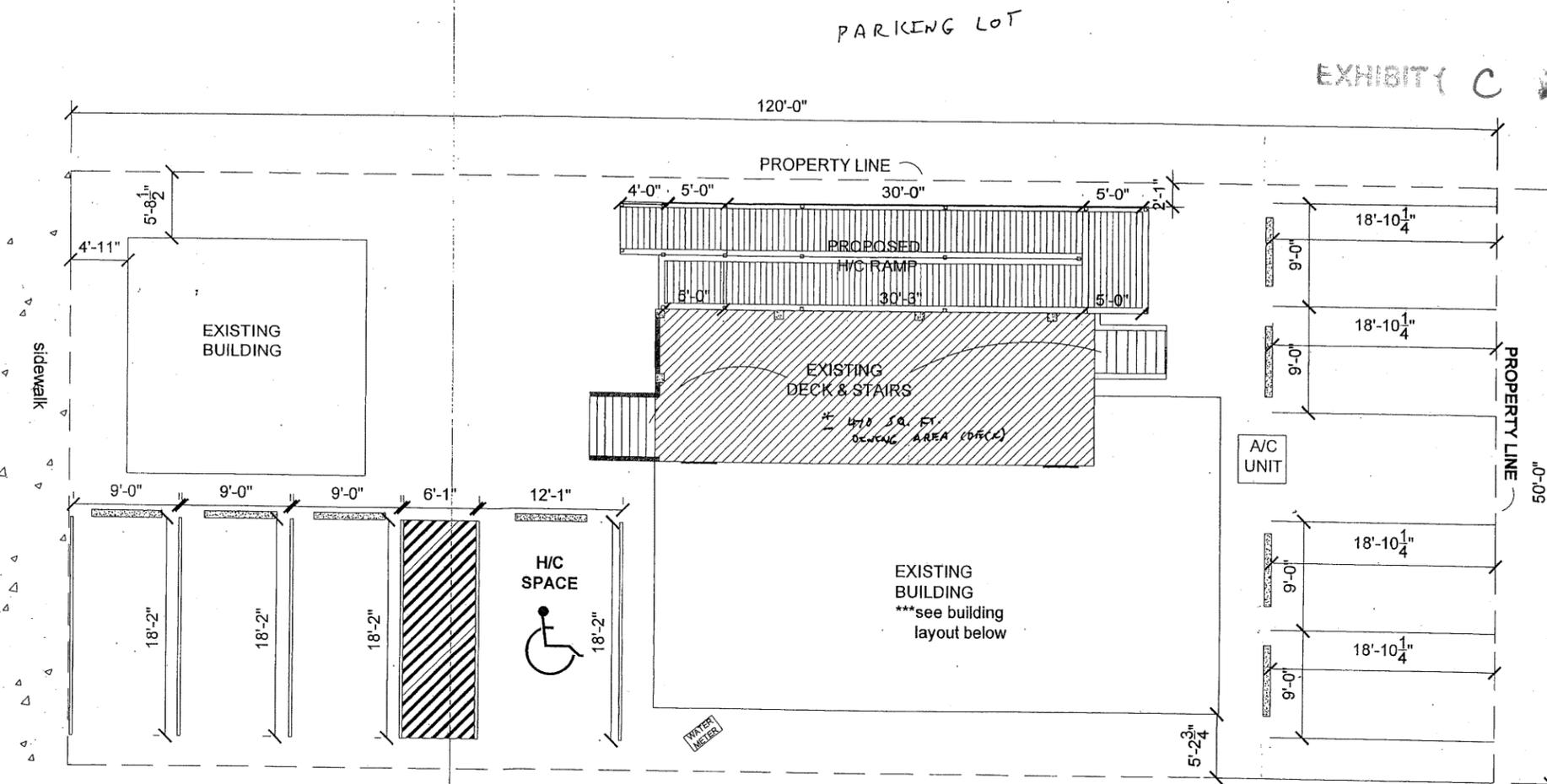
Requirements for accessibility:

1. Florida Building Code, 2004 edition - Chapter 11.

**Wind Design:**

This building / structure has been designed in accordance with section 1609 of the 2004 Florida Building Code for gravity and pressures generated by a wind velocity of 130 MPH, 3 second gust.

Basic wind Speed  
130 MPH ( 3 second Gust)  
Importance Factor  
1.0  
Exposure  
B  
Method of Design  
FBC 2004, section 1609



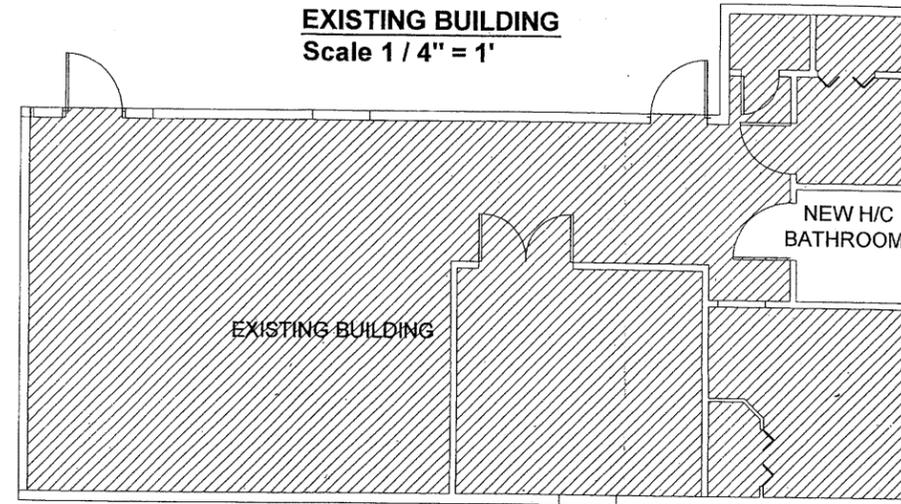
**SITE PLAN**  
Scale 1/4" = 1'

**Code Compliance Verification**

J.C. Kosinski Engineering Inc. attests that to the best of our knowledge and belief that:

As of 4 - 5 - 06 the codes listed below are legally adopted requirements governing the work described by these plans and specification and the work described herein to the best of our knowledge and belief has been designed in full compliance with these codes and interpretations.

- Building Code : FLORIDA BUILDING CODE, BUILDING 2004
- Plumbing Code: FLORIDA BUILDING CODE, PLUMBING 2004
- Life Safety Code: NFPA 101 2003 EDITION
- Accessibility Code: FLORIDA BUILDING CODE, BUILDING 2004



**EXISTING BUILDING**  
Scale 1/4" = 1'

RESIDENTIAL

J.C. Kosinski Engineering, Inc.  
135 Gulfview Ave.  
Fort Myers Beach, FL 33931  
Office 239-872-2179 Fax 239-463-2780

PRIMEAU PROPERTY  
1365/1375 ESTERO BLVD  
FT. MYERS BEACH  
STRAP# 19-46-24-W4-0060B.0120

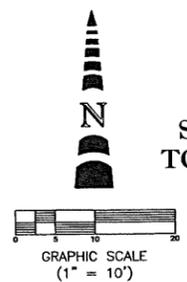
Bob Rockwell Construction, Inc.  
11615 Chitwood Drive, Suite C  
Fort Myers, FL 33908  
Office 239-466-8980 Fax 239-432-0113

SHEET

A1  
1 of 2

# SURVEY PLAT

OF A PARCEL OF LAND LYING IN  
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,  
TOWN OF FT. MYERS BEACH, LEE COUNTY, FLORIDA



**DESCRIPTION:**

LOT 12, BLOCK B, VENETIAN GARDENS AS RECORDED IN PLAT BOOK 6, PAGE 70 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

EXHIBIT ( D )

**NOTES:**

- SURVEY BASED ON THE PLAT OF VENETIAN GARDENS AS RECORDED IN PLAT BOOK 6, PAGE 70 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND EXISTING MONUMENTATION.
- BEARINGS SHOWN HEREON ARE BASED ON THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS BEARING N.70°54'06"W.
- PARCEL LIES IN FLOOD ZONE "A12", HAVING A BASE FLOOD ELEVATION OF +12.0'. THIS INFORMATION WAS TAKEN FROM FLOOD INSURANCE RATE MAP 125124 0429 D WITH A REVISION DATE OF 09-20-96.
- THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.
- IRON RODS "SET" ARE 5/8" X 18" REBAR WITH ORANGE CAP BEARING CORPORATION NO. 7071.
- ABOVE GROUND & UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
- WETLANDS, IF ANY, WERE NOT LOCATED.
- THIS PLAT PREPARED AS A BOUNDARY AND TOPOGRAPHIC SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.
- SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
- ELEVATIONS AS SHOWN HEREON ARE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929.
- PARCEL CONTAINS 5,828 SQUARE FEET OR 0.13 ACRES, MORE OR LESS.
- DATE OF LAST FIELD WORK: 07-14-2006.

**FOR THE EXCLUSIVE USE OF:**  
- NORMAN PRIMEAU

FOR THE FIRM:   
SCOTT M. SHORE  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. LS #5743  
DATE SIGNED: 7-20-2006

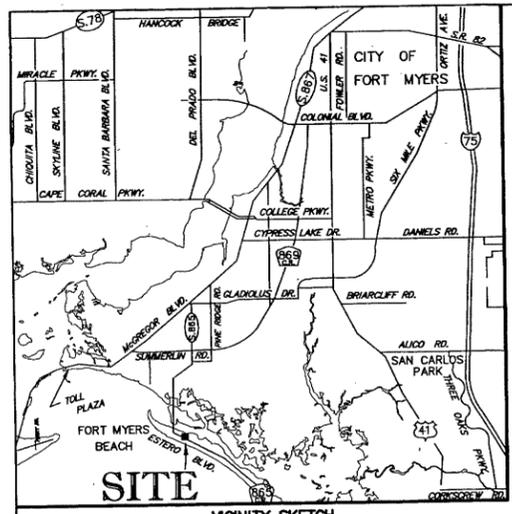
THIS SURVEY IS ONLY FOR THE LANDS AS DESCRIBED. IT IS NOT A CERTIFICATE OF TITLE, ZONING, EASEMENTS OR FREEDOM OF ENCUMBRANCES.  
THIS SURVEY WAS PREPARED WITH BENEFIT OF AN ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.  
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

TITLE: **BOUNDARY & TOPOGRAPHIC SURVEY**

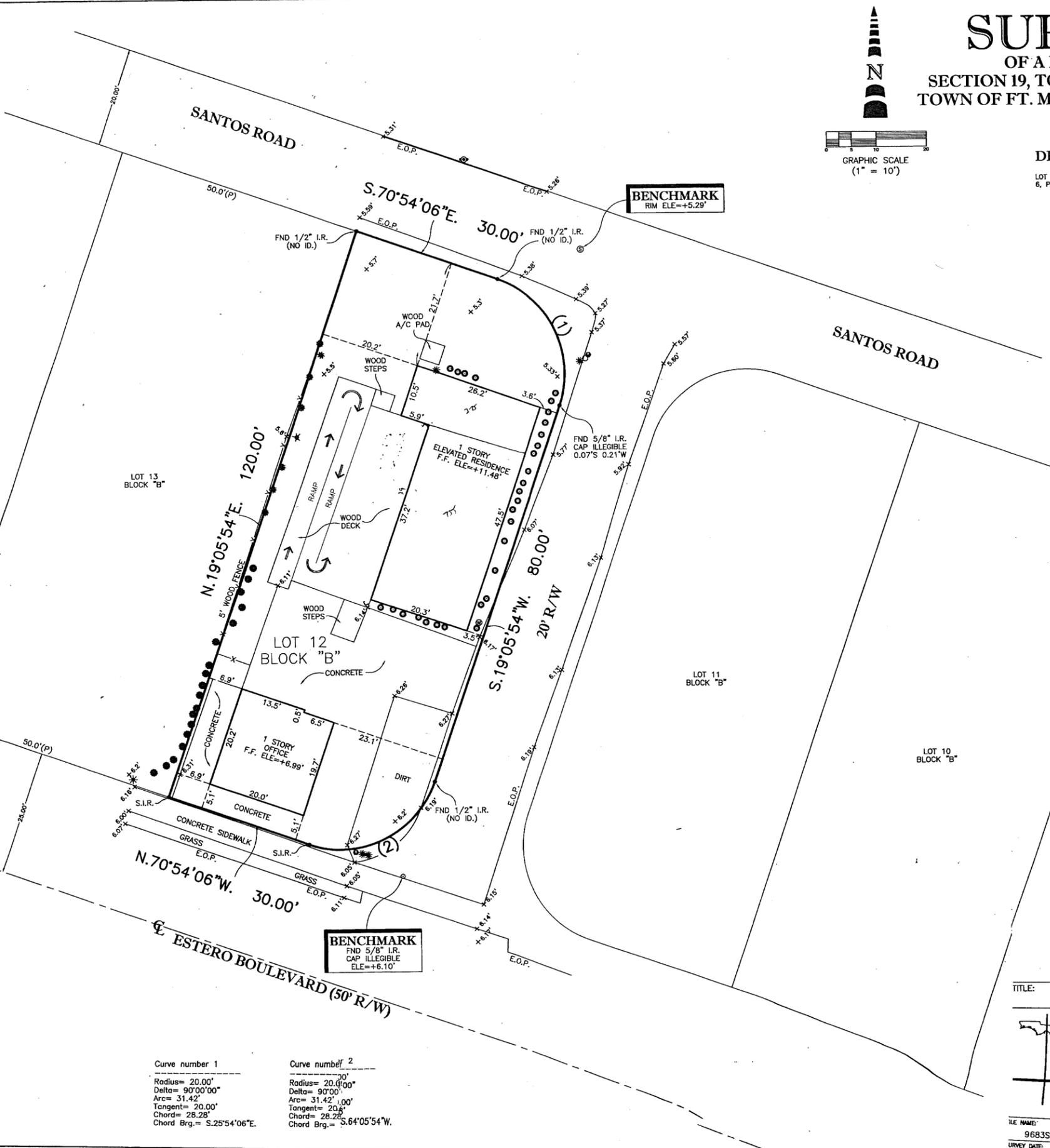
**METRON**  
SURVEYING & MAPPING LLC  
LAND SURVEYORS-PLANNERS  
LB #7071

10970 S. CLEVELAND AVENUE  
SUITE #605  
FORT MYERS, FLORIDA 33907  
PHONE: (239) 275-8575  
FAX: (239) 275-8457  
www.metronfl.com

FILE NAME: 9683SR.dwg	FIELD BOOK/PAGE: 384/69	PROJECT NO.: 9683	SHEET: 1 OF 1
DATE: 07-14-2006	DRAWN BY: DESII	SCALE: 1" = 10'	CHECKED BY: SMS



VICINITY SKETCH  
(NOT TO SCALE)



**LEGEND:**

- (1) = MATCH TO CURVE DATA
- (P) = PLAT
- (D) = DEED
- (M) = MEASURED
- (C) = CALCULATED
- LB = LICENSED BUSINESS
- P.B. = PLAT BOOK
- PG. = PAGE
- O.R. = OFFICIAL RECORDS BOOK
- ID. = IDENTIFICATION
- R/W = RIGHT-OF-WAY
- CL = CENTER LINE OF ROAD/DRIVEWAY
- F.F. = FINISH FLOOR
- ELE. = ELEVATION
- DESC. = DESCRIPTION
- P.I. = POINT OF INTERSECTION
- P.C. = POINT OF CURVE
- R.C.P. = REINFORCED CONCRETE PIPE
- E.R.C.P. = ELLIPTICAL REINFORCED CONCRETE PIPE
- C.M.P. = CORRUGATED METAL PIPE
- E.O.P. = EDGE OF PAVEMENT
- T.O.B. = TOP OF BANK
- T.O.S. = TOE OF SLOPE
- E.O.W. = EDGE OF WATER AT TIME OF SURVEY
- FND = FOUND
- L.C.P.W. = LEE COUNTY PUBLIC WORKS
- N.G.V.D. 29 = NATIONAL GEODETIC VERTICAL DATUM, OF 1929
- I.R. = IRON ROD
- S.I.R. = SET 5/8" IRON ROD & CAP LB# 7071
- F.N.&D. = FOUND NAIL AND DISK
- WV = WATER VALVE
- EX. ELE. = EXISTING ELEVATION
- FH = FIRE HYDRANT
- GWA = GUY WIRE ANCHOR
- OH = OVERHEAD UTILITY LINES
- WUP = WOOD UTILITY POLE
- MC = MANHOLE COVER
- CCP = CONCRETE POWER POLE
- CB = CATCH BASIN
- LP = LIGHT POLE
- WM = WATER METER
- TS = TELEPHONE SERVICE
- FT = FOCUS TREE
- BP = BOUGAINVILLEA PLANT
- PP = PALM PLANT
- DP = DWARF PLANT
- PT = PALM TREE
- BT = BANANA TREE

Curve number 1  
Radius= 20.00'  
Delta= 90°00'00"  
Arc= 31.42'  
Tangent= 20.00'  
Chord= 28.28'  
Chord Brg.= S.25°54'06"E.

Curve number 2  
Radius= 20.0000'  
Delta= 90°00'  
Arc= 31.421000'  
Tangent= 20.00'  
Chord= 28.2828'  
Chord Brg.= S.64°05'54"W.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2011-\_\_\_\_  
FMBSEZ2010-0006 (Merlo's Bar & Grill)

WHEREAS, applicant Merlo's Bar and Grill, LLC. has requested a Special Exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages in an outdoor seating area within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, the subject property is located at 1365 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060B.0120 and the legal description of the subject property is Lot 12, Block B, Venetian Garden Subdivision, according to the plat thereof recorded in Plat Book 6, Page 70 in the Public Records of Lee County Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on May 10, 2011; 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 34-88.

IT IS HEREBY RESOLVED BY THE LPA 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 and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE/DENY** the applicant's request for a Special Exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages in an outdoor seating area within 500 feet of a dwelling unit under separate ownership, with such approval subject to the following conditions:

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. *The area of the subject property used for outdoor consumption on premises must be confined entirely to the 470± square foot existing deck, illustrated by **Exhibit C**.*
2. *Sales, service, and consumption of alcoholic beverages outdoors must not begin earlier than 7:00 am and must end no later than 12:00 midnight each day.*

3. *Music and other audible entertainment are prohibited before 11:00 AM and after 9:00 PM seven days a week and must comply at all times with applicable Town noise ordinances.*
4. *Signage must be installed at Norm's Parking lot indicating which spaces are reserved exclusively for the subject property.*

### **RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions exist that make the requested approval, as conditioned, appropriate:

*The Comprehensive Plan notes in the Consensus on Commercial Uses: "The present concentration of commercial uses in the Times Square area is good for Fort Myers Beach. Despite severe congestion during peak season and a general seediness that had been developing, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today's floodplain regulations. The recent CRA improvements have sparked a renewed interest in Times Square among most islanders and has spurred a healthy movement to upgrade existing buildings."*

*As contemplated in the Comprehensive Plan, the Times Square/Downtown area has continued to emerge as a vibrant urban core for the Town, and as such the area can support a more intensive variety of uses which is consistent with the applicant's request*

2. The requested special exception, as conditioned, **is/is not** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

*The subject property is located in what the Comprehensive Plan terms the Downtown Core. The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings." The applicant's request for outdoor consumption on premises is in fitting with the vision for the area as described above.*

*Further, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Downtown Core/Times Square area as a "nucleus of commercial and tourist activities" with pedestrian oriented commercial uses that enhance the experience of both the resident and visitor. Again, the applicant's request is in keeping with this vision, by providing an*

*additional venue for the enjoyment of the unique outdoor environment of Fort Myers Beach.*

3. The requested special exception, as conditioned, **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use.

*The very nature of this application indicates that the requested use of outdoor consumption on premises is not a use allowable by right on the subject property. It is however, a use permitted by special exception. (See Section 34-1264(a)(2)).*

*The applicant's request is appropriate at this site due to the subject property's location in the Downtown Core Area, and is in keeping with the goals, objectives, policies and intent of the Comprehensive Plan which describes a vibrant tourist commercial district in the Downtown Core.*

4. The requested special exception, as conditioned, **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources:

*The proposed outdoor consumption application will have virtually no negative effects on the environmentally critical areas and natural resources of Fort Myers Beach as the subject property and proposed deck in question are located in an established commercial district, landward of the coastal construction line(s) and far from environmentally critical areas and sensitive natural resources.*

5. The requested special exception, as conditioned, **will/will not** be compatible with existing or planned uses and **will/will not** cause damage, hazard, nuisance or other detriment to persons or property:

*The subject property and the area immediately surrounding it, is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area does not require that it be transformed from an intensively commercial area into a primarily residential district. It possesses a vibrant mix of uses and such Staff feels the applicant's request is compatible and appropriate within its neighborhood.*

6. The requested special exception, as conditioned, **will/will not** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

*The outdoor consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including but limited to 34-678(7)(e)(1), 34-678(7)(e)(4), and 34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member \_\_\_\_\_ and seconded by LPA Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	AYE/NAY	Bill Van Duzer, Member	AYE/NAY
Carleton Ryffel, Vice Chair	AYE/NAY	Rochelle Kay, Member	AYE/NAY
John Kakatsch, Member	AYE/NAY	Hank Zuba, Member	AYE/NAY

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of MAY, 2011.

Local Planning Agency of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Marilyn W. Miller, Esquire  
*LPA Attorney*

ATTEST:

By: \_\_\_\_\_  
Michelle Mayher  
*Town Clerk*