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October 15, 1995

Pam Houck
Lee County Zoning Dept.
P.O. Box 398
Ft. Myers, Fl. 33902



EXHIBIT IV-D

ZONING COUNTER

Re: COP in conjunction with outdoor seating at 1668 I Street Ft. Myers Beach

Dear Pam:

This is a request for a Special Permit to allow a COP in conjunction with outdoor seating at 1668 I Street on Ft. Myers Beach. The property is zoned C-1, and is a cottage that has been used for commercial purposes for many years. In 1988, the Board of Zoning Adjustments approved a parking variance to allow the retail sales of beach oriented convenience items, including packaged food and beverages and beach recreational rentals. (Resolution BZA-88-339) The property holds licenses for jet skis, parasail, ultralights, a package license for beer and wine, two seasonal rentals upstairs and a snack bar which sells pre-packaged food. The snack bar contains a microwave where food items such as hamburgers can be heated. The applicant wants to obtain a different liquor license; a 2 COP, and provide outdoor seating for its customers. This seating would occur on an existing ground level deck, located immediately behind the structure and on the adjacent beach. The proposed hours of operation of the COP is 10 AM-10PM. The property is frequently used for volleyball contests and is a very popular spot for this and other recreational activities. Sporting events are sometimes viewed on a television set wheeled onto the outside deck area for the pleasure of the customers. Given the diversity of the current use of the property, and the activity that occurs there, the proposed use is logical. The interior area of the snack bar is being improved and the outdoor seating is a realistic adjunct.

The property itself is located in an area that is probably the most mixed area on the Beach. The owner of the property owns several seasonal rental beachfront cottages to the immediate north of the subject. The other flanking beachfront properties are clearly seasonal. Landward of the subject in the immediately adjacent area, and near proximity, are Hooters, a small strip center containing offices/commercial uses, other rentals, a service station (Hess) and a variety of other commercial enterprises. I would not classify the primary uses in the area as residential, except to the extent that there are seasonal rentals in the area, which cater to younger people. Although parking is not an issue in this case, and a variance to zero parking was approved previously (resolution attached), there are about six non conforming spaces on the property.

95-10-173-025

The number of seats requested is 75, of which about 20 would be on the adjoining ground level deck and the balance would be on the actual beach on the sand. The seating requested is about equal to the amount of people that show up for these recreational activities discussed above. [There has been outdoor entertainment on the property that will continue to exist in accordance with the County Noise Ordinance.] According to the applicant, there has never been a citation nor warning issued on this property related to the Noise Ordinance. The outdoor entertainment has not presented a problem in the past and it is not expected to change.

The information which follows is our response to the Narrative Statement criteria for Special Permit requests.

1. Error or ambiguity in the zoning ordinance or map that must be corrected.

Response: There is no ambiguity in the LDC which must be corrected. The LDC specifically provides for the proposed uses as a Special Permit. The property is zoned C-1.

2. Are there changed or changing conditions which makes approval of the application appropriate?

Response: Outdoor seating has become increasingly popular especially in tourist and beach areas which is the instant case. This would be considered a changing condition and one which would be consistent with this premise.

*for other uses Restaurants
Hotels*

3. Will urban services be available and adequate to serve the proposed land use change?

Response: All urban services are currently available to the property.

4. Is the request consistent with the goals, objectives, policies and intent and the densities, intensities and general uses of the Lee Plan?

Response: The proposed uses is permitted in the zoning district in which it is located. It is also consistent with the provisions of the Lee Plan, specifically:

Policy 1.1.4 which describes the Urban Community land use category as being freestanding communities of a distinctly urban character.

Policy 18.2.1. Since the nature of the business and its outward appearance will not change, i.e., it was and continues to be a mixed commercial use, it will not be an intrusion into any residential neighborhood. In fact there really is no owner occupied neighborhood near the present use. The proposed use should be considered as a logical adjunct to the exiting use of the property.

Policy 6.1.7. The property is not located near any existing or planned public schools.

95-10-173.025

Policy 6.1.5. The property is located in a commercial area one block off Estero Blvd. and would be considered an enhancement of an infill redevelopment.

Policy 6.1.2. The proposed use is compatible with adjacent existing land uses and with existing public services.

Objective 2.1. Although this is not a rezoning case, approval of this application will promote a contiguous and compact growth pattern.

5. Will this request protect, conserve environmentally critical areas and natural resources?

Response ; The property is already developed.

6. Will it be compatible with existing or planned uses and not cause damage, hazard, nuisance or detriment to persons or property?

Response: The property is located in a mixed use area and it will therefore be compatible with other uses.

7. Will the location of the project place an undue burden upon existing transportation facilities?

Response: Not any greater than in the past, and allowing the uses may actually reduce trips. Moreover, the proposed use is intended to primarily serve customers already on the property.

8. Will the project be served by streets with the capacity to carry traffic generated by this project?

Response: See #7 above.

9. Is the requested use in compliance will all applicable zoning regulations?

Response: Yes, Special Permits and procedures are addressed in the LDC.

We think that the information provided above addresses the requirements for review criteria. If you need any additional information, please let me know. Thank you.

Sincerely,


CARLETON RYFFEL, AICP, Inc.

RECEIVED
OCT 19 1995

ZONING COUNTER

95-10-173-025



APPLICANT'S
EXHIBIT
14
9510-173 025



APPLICANT'S
EXHIBIT
15
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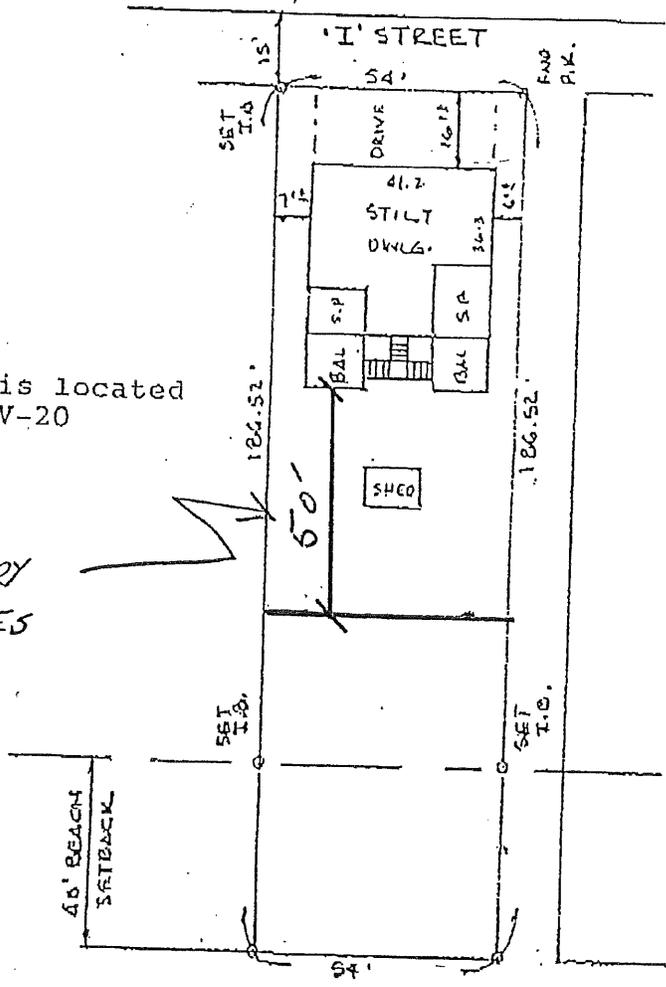
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This property is located
in flood zone V-20
(E1. 17.0)

50' BOUNDARY
FOR TABLES



GULF OF MEXICO.

House Location
1668 'I' Street
Lot 11, Block B
Crescent Beach
Lee County, Florida.
Scale: 1" = 40' Sept. 23, 1987
Recorded in Plat Book 4 page 45 of the
Official Records of Lee County, Florida.

Certified to: Savings of America
Chicago Title Co.
Murray Carslake

I HEREBY CERTIFY THAT THE SURVEY REPRESENTED HEREON MEETS THE
MINIMUM REQUIREMENTS ADOPTED BY THE F.S.P.L.S. AND THE F.L.T.A.

FLORIDA REGISTERED LAND SURVEYOR NO. 3695
ROBERT M. STILL 111 LEE BLVD., LEHIGH ACRES FL 33936 369-5179
FII F NO 8792-1

88-11-22

MURRAY CARSLAKE

REQUEST: A variance in the G-1 district from the minimum required 10 parking spaces (Section 202.13.J.2.m.2.), to zero (0) parking spaces

LOCATION: The subject property is located at 1668 "I" Street, Fort Myers Beach, in Section 19, Township 46 South, Range 24 East, Lee County, Florida. (District #3)

SIZE OF PROPERTY: 10,072 square feet

NOVEMBER 21, 1988, BOARD OF ZONING ADJUSTMENTS

CORRESPONDENCE: There is no correspondence of support or objection on file.

SUPPORT: Neale Montgomery represented the applicant in this request.

OPPOSITION: None.

STAFF TESTIMONY: Pamela Houck of the Zoning and Development Review Division presented staff recommendations to approve the request with the conditions that the commercial use shall be limited to the retail sales of beach oriented convenience items, including packaged food beverage and beach recreational rentals; and public access shall be limited to the beach on Gulf side of the business. Staff clarified that it is not staff's intent to preclude any service entrance from "I" Street, that would be permitted.

APPLICANT TESTIMONY: Neale Montgomery concurred with staff's recommendations and summarized that the existing business use has been there, Mr. Carlake purchased it with the understanding that the business could continue, and is now having a problem with Code Enforcement. They are working it out with Code Enforcement and they will now be removing the out building and putting the business in the other side of the shed under the duplex and will be complying with various codes, and will be able to continue with the business. They will not be having more or less parking for the same business than they do now, but because they are moving the business from an existing structure with a legal nonconforming to under the duplex, they need the variance. If they were keeping the existing building they would not need the variance.

OPPOSITION TESTIMONY: None.

BOARD OF ZONING ADJUSTMENTS DISCUSSION: None.

BOARD OF ZONING ADJUSTMENTS

SUMMARY REPORT

CASE NUMBER: 88-11-22

TYPE OF CASE: VARIANCE

HEARING DATE: November 21, 1988

I. APPLICATION SUMMARY:

- A. Applicant: Murray Carslake
- B. Request(s): A variance in the C-1 district from the minimum required 10 parking spaces (Section 202.13.J.2.a.2.), to zero (0) parking spaces
- C. Location: The subject property is located at 1668 "I" Street, Fort Myers Beach, in Section 19, Township 46 South, Range 24 East, Lee County, Florida. (District #3)
S.T.R.A.P. #19-46-24-07-0000B.0110
- D. Property Description:
1. Dimensions: 54 feet± by 186.52 feet±
 2. Area: 10,072 square feet±
- E. Stated Reasons for Request/Proposed Use: The applicant is requesting this variance to bring the existing use into compliance with the regulations.

II. BACKGROUND INFORMATION:

- A. Existing Conditions: A duplex and a commercial retail exist on this lot.
- B. Zoning History: C-1 (as converted) is the original zoning.
- C. Land Use Map Designation: Urban Community
- D. Relevant Lee Plan goals, objectives and policies: The requested variance is CONSISTENT with the Lee Plan as it does not conflict with the goals, objectives and policies of the Lee Plan.
- E. Infrastructure:
- Sewer: Florida Cities
- Water: Florida Cities
- Fire District: Fort Myers Beach Fire District
- Road Access: "I" Street, a local road with a 15 foot right-of-way
- F. Adjacent Zoning and Land Use:
- North: C-1, single-family (rentals) and commercial

Case Number: 88-11-22
Hearing Date: November 21, 1988

East: C-1, a beach access easement; then single-family (rentals)

South: Gulf of Mexico

West: C-1, duplex

III. RECOMMENDATIONS:

- A. Staff Recommendation: APPROVE with conditions
- B. Rationale for Staff Recommendation: This variance is being requested to permit the continuance of a beach oriented commercial retail business on this 10,072 square foot lot located on "I" Street on Fort Myers Beach.

The property is located between "I" Street and the Gulf of Mexico. A duplex and a small commercial building exist on the property. The adjacent properties are zoned C-1 and are developed with a mix of residential (rental) and beach oriented commercial uses.

The duplex is located on the front portion of the lot and the commercial building is located just behind the duplex on the beach. The duplex was constructed in 1966 and the commercial building in the 1970's. The commercial building is best described as a concession stand containing approximately 120 square feet and used for the sale and rental of beach oriented items, including packaged food and beverages. Based on all available county records, both structures were in compliance with zoning regulations in effect at the time they were constructed.

The requested parking variance is the end result of resolution to an appeal of the county's denial of the applicant's application for occupational license for the retail business conducted within the commercial building. The license was denied based on noncompliance with zoning. A scenario of this denial is contained in the applicant's Exhibit "A" contained herein as attachment C. As resolution of this problem, the county has recommended that the applicant remove the existing commercial building and relocate the retail use under the existing duplex. In doing this the off-street parking would lose its nonconforming status.

The move to the location under the duplex will permit compliance with the Flood Hazard Ordinance and Coastal Construction Code and protect health, safety and welfare. It should not have an effect on surrounding properties as the uses will continue as they have for more than ten years and staff finds customers will be mainly pedestrian utilizing the beach.

C. Considerations for Staff Recommendation:

1. Exceptional or extraordinary conditions or circumstances exist which are inherent in the land and structure involved and such exceptional or extraordinary conditions or circumstances create an undue hardship on the property owner and are not generally applicable to other lands, structures or buildings;
2. The exceptional or extraordinary conditions or circumstances do not result from the actions of the applicant;
3. Without the variance the provisions of this ordinance would deprive the applicant of all reasonable use of his property;

Case Number: 88-11-22
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4. The variance, if granted, is the minimum variance that will make possible the reasonable use of the land and structure;
5. Granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

recommends APPROVAL of the requested variance with the following conditions:

1. The commercial use shall be limited to the retail sales of beach oriented convenience items, including packaged food and beverage and beach recreational rentals; and
2. Public access shall be limited to the beach on Gulf side of the business.

D. Public Input: No correspondence is on file as of November 14, 1988.

IV. BOARD OF ZONING ADJUSTMENTS:

A. Findings:

1. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district; and
2. That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of this ordinance (any action taken by an applicant pursuant to lawfully adopted regulations preceding this ordinance will not be considered self-created); and
3. That such variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and
4. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
5. That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent nature as to make it more reasonable and practical to amend the ordinance.

B. Action:

Motion by: _____ Second by: _____

V. ATTACHMENTS:

- A. Site Plan
- B. Basis for Request
- C. Appeal
- D. Area Location Map

ZONING

Mini-warehouse means any building designed or used to provide separate storage rooms to individuals or businesses for a fee or rental, with such rooms being intended solely as dead storage depositories for personal property, inventory and equipment and not for any other commercial or industrial use. See *Warehousing, public* and *Storage, dead*.

Mobile home. See *Dwelling unit, types*.

Model means a residential or commercial structure or part thereof used solely for demonstration purposes or sales promotion, not occupied as a dwelling unit, and open to the public for inspection.

Modular home. See *Building, conventional*.

Moor means to secure a vessel with lines.

Multiple-family building. See *Dwelling unit, types*.

Multiple-occupancy complex means a parcel of property under one ownership or singular control, or developed as a unified or coordinated project, with a building or buildings housing more than five occupants conducting a business operation of any kind.

Multi-slip docking facility means two or more docks which will provide vessel mooring slips to unrelated individuals, either for rent or for sale. A multi-slip docking facility is distinguished from a marina in that it has no commercial activity associated with it, including boat rentals or those uses or activities listed under transportation services group I (see section 34-622(c)(53)).

Music store means establishments primarily engaged in the retail sale of musical instruments, phonograph records, sheet music and similar musical supplies.

Newsstand means establishments primarily engaged in the retail sales of newspapers, magazines and other periodicals, including home delivery.

Nightclub means a restaurant, dining room, bar or other similar establishment providing food or refreshments wherein paid floorshows or other forms of paid entertainment are provided for customers as a part of the commercial enterprise.

Nonconforming building or structure, lot or use means an existing building or structure, lot or use, lawful when established, which fails to comply with any provisions of this chapter, or which fails to comply as the result of subsequent amendments. See article VIII of this chapter.

Nonstore retailers. See section 34-622(c)(30).

Nontransient park means a recreational vehicle development designed, intended or used for longterm (six months or longer) emplacement of a recreational vehicle on recreational vehicle sites.

Novelties, jewelry, toys and signs, manufacturing. See section 34-622(c)(29).

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL PERMIT: CASE 95-10-173.02S
APPLICANT: MURRAY CARSLAKE, rep. by LINDA KANE, in ref. to TIKI KLUB
HEARING DATE: December 7, 1995

I. APPLICATION:

Filed by LINDA KANE, 12140 Siesta Dr., Ft. Myers Beach, FL 33931 (Applicant); MURRAY CARSLAKE, 5770 Estero Blvd., Ft. Myers Beach, FL 33931 (Owner); CARLETON RYFFEL, AICP, 6309 Corporate Ct., #207, Ft. Myers, FL 33919 (Agent).

Request is for a Special Permit in the C-1 (Commercial) district for consumption on premises with outdoor seating per Land Development Code Section 34-1264(a).

The subject property is located at 1668 I Street, Fort Myers Beach (over Sky Bridge to Estero Blvd., south to Ave E [just beyond Hooters] turn right to I St., building is on Gulf, directly to the right of public access), in S19-T46S-R24E, Lee County, FL. (District #3)

The Strap # as furnished by the Applicant is: 19-46-24-07-0000B.0110

II. STAFF RECOMMENDATION:

The Department of Community Development Staff Report was prepared by Mike Pavese. The staff report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner APPROVES the Applicant's request and GRANTS a Special Permit in the C-1 (Commercial) district for consumption on premises with outdoor seating per Land Development Code Section 34-1264(a) for the real estate described in Section VIII. Legal Description WITH THE FOLLOWING CONDITION(S):

1. The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. However, this does not prohibit the sale of draft beer or wine which is poured from a large bottle, so long as it is consumed only in the designated locations. There will be no waiter or waitress service; the customers must order their drinks from inside the premises and directly from the person who pours the drinks.
2. The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff Report) which separates the retail use from the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats. The alcohol consumption portion of the beach area will be clearly marked.
3. Hours of operation for the outdoor seating area are limited to 10:00 a.m. to 10:00 p.m., daily.
4. Live entertainment is limited to the hours of 10:00 a.m. to 8:00 p.m., daily.
5. The conditions of Resolution No. BZA-88-339 will remain in full force and effect to the extent that they are not in conflict with this Special Permit.

IV. HEARING EXAMINER DISCUSSION:

The Applicant, Murry Carslake, represented by Linda Kane, in reference to the Tiki Klub, is requesting a Special Permit in the C-1 (Commercial) zoning district to allow consumption of beer and wine on the premises which is located at 1668 I Street, Fort Myers Beach.

The Staff is recommending approval of the request with four conditions which would limit the location of the alcohol consumption and the hours of operations of the outdoor portion of the business.

The Applicant objected to the stringent nature of the conditions, and put on testimony which was designed to loosen them somewhat without eliminating them completely.

The Tiki Klub is located in a 2-story building which contains a combination of commercial and residential uses. The upper portion of the building contains two residential units and the lower portion contains a small retail store which sells beach related convenience items and packaged food and beverages. There is also a portion of the lower floor which is used for storage. Ancillary uses which occur on the site include jet ski and parasail rentals and ultralight rides. It was also noted that the beach area behind the building is often used for volleyball games.

The retail business on the site has had a (2 APS) license since 1981, which permits the sale of beer and wine for off-site consumption. The site was also the subject of a variance in 1988 which reduced the number of parking space to zero, and which limited the public access to the beach; it also limited the use to the sale of those items enumerated above.

The subject site and the properties surrounding it are in the C-1 zoning category. It was pointed out that this is an area of the beach which is tourist and entertainment oriented and which caters, primarily, to a transient, younger clientele. As such the requested use is not an intrusion into a more sedate area.

The Staff was of the opinion that the sale of beer and wine for on premise consumption would be proper, but they were also of the opinion that the use of kegs of beer (rather than cans and bottles), and the sale of wine by the drink (rather than by the bottle), would be too intense a use for the location. Therefore, the difference from what is being requested and what the Staff is recommending is one of degree. However, it was not clear to this Hearing Examiner what the difference would be if drinks were sold by the glass rather than by the can or bottle. Rather, it would appear that beer and wine sold by the glass would be safer and cleaner than by beer and wine sold by the can or bottle because there would be less trash as a result of the discarding of the cans and bottles.

Testimony was offered by the Applicant which demonstrated that entertainment already existed at the subject location, and that the condition recommended by the Staff to prohibit live entertainment would be taking something away from the Applicant which has never been a problem at this location.

Given the resort oriented character of the properties around the subject location, and given the already existing sale of alcohol and the existence of live entertainment on those surrounding properties, it is this Hearing Examiner's opinion that the requested use, as conditioned, is not contrary to the public's interest nor does it pose a public health, safety, comfort, convenience or welfare threat to the citizens of the County.

Therefore, the Special Permit, as conditioned is approved.

V. FINDINGS AND CONCLUSIONS:

Based upon the staff report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. There is no negative impact on the intent of the Land Development Code as a result of the granting of the Special Permit, conditioned as set out above.

B. That the granting of the Special Permit, conditioned as set out above, is consistent with the goals, objectives, policies and intent of the Lee Plan, as last amended.

C. That the Special Permit, conditioned as set out above, meets or exceeds all performance and locational standards set forth for the proposed use.

D. That the Special Permit, conditioned as set out above, is consistent with the densities, intensities and general uses set forth in the Lee Plan.

E. That granting the Special Permit, conditioned as set out above, will protect, conserve and preserve environmentally critical areas and natural resources.

F. That the Special Permit, conditioned as set out above, will be compatible with existing or planned uses and will not cause damage, nuisance, hazard or other detriment to persons or property.

G. That the location of the requested Special Permit does not place 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 use(s) which will be developed in conjunction with the Special Permit.

H. That the requested use is in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in the Land Development Code, as last amended.

I. That granting the requested Special Permit, conditioned as set out above, is not contrary to the public interest, public health, public safety, public convenience or public welfare of the citizens of Lee County.

VI. PRESENTATION SUMMARY:

After the Hearing Examiner placed all witnesses under oath, Mike Pavese, Division of Zoning and Development Services, presented the Staff Report in this request for a Special Permit in the C-1 (Commercial) district for consumption on premises (COP) with outdoor seating. The subject property is located on I Street, on the Gulf side of Estero Boulevard, Fort Myers Beach.

The subject property is developed with a 2-story building that was constructed in 1966. The existing structure is a combination of residential and commercial uses. There are two residential units upstairs while a portion of the first floor is used as a small retail operation specializing in the sale of beach related convenience items, and packaged food and drink to go.

The property was previously the subject of a variance request in 1988. The Applicant purchased the property approximately one year before that and attempted to obtain an occupational license for basically the same type of retail use. At that time he attempted to obtain a license for an existing shed which was located between the existing structure and the Gulf of Mexico. Because the County determined the existing use was non-conforming, the application for an occupational license was denied.

As a resolution to the Applicant's problem, the County suggested that he apply for a variance and attempt to relocate the retail use that had previously been located in the shed to the ground floor of the commercial structure. This caused a problem from the standpoint that, in order to relocate to the other building, he would have to provide the appropriate

parking for the use. At that time there was no parking available on site; therefore, a variance from the minimum requirement of 10 spaces, to zero spaces was requested and approved.

In approving the variance request the Board of Zoning Adjustments applied two conditions. The first condition provided that the commercial use would be limited to the retail sales of beach oriented convenience items including package food and beverage and beach recreational rentals. The second condition was that public access to the commercial use would be limited to the beach on the Gulf side of the business.

The instant request is for a 2-COP license. The proposed outdoor seating area is a 10-foot by 40-foot deck which is located at the rear of the building, and facing the Gulf of Mexico.

Staff has recommended approval of the request with five conditions. Condition 1 states that the COP is limited to use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. Condition 2 limits the proposed outdoor seating area to the 10-foot by 40-foot deck located to the rear of the existing structure. Condition 3 limits the hours of operation of the outdoor seating area to the hours of 10:00 a.m. to 10:00 p.m., daily. Condition 4 states that live entertainment is prohibited; and Condition 5 states that the conditions of resolution number BZA 88-339 is to remain in full force and effect.

The surrounding zoning is C-1. The existing uses surrounding this property are primarily residential, but they are of a seasonal rental nature. There are some commercial uses in the general vicinity that are located closer to Estero Boulevard.

Staff felt that the request, as conditioned, was consistent with the Lee Plan and with the surrounding zoning and land uses; therefore, they recommended approval.

The Hearing Examiner noted that Staff was keeping the other conditions in place and that there was a provision in the old resolution that limited the request to packaged food and beverage. He asked if there would be a conflict since this request, if approved, would allow outside consumption? Mr. Pavese stated that there could be a conflict if the Applicant was planning on selling draft beer which is not sold in a factory sealed container. The Hearing Examiner asked if Staff would object if he changed the language to state that the other resolution was in effect to the extent that it is not in conflict with this resolution, and Mr. Pavese replied that would be acceptable.

The Hearing Examiner asked why this request was not handled administratively? Mr. Pavese replied that these types of requests were done administratively in conjunction with a restaurant use; however, this use was not a restaurant, it is a retail operation.

Matt Uhle, the Applicant's attorney, referenced the last sentence of Condition 1 which states that "the use of a bar/service bar on this property is prohibited." He questioned the Staff about the differences between selling wine and beer by the bottle or can, as opposed to selling it by the glass. Staff indicated that their concern was that, if beer and wine were sold by the glass, it might create a "bar" situation. The existing use is a retail use. The proposed uses are specifically restricted by a previous resolution that permits only packaged food and beverages for sale. To allow draft beer to be served from a keg, or wine to be served by the glass, would go against the conditions approved in that resolution.

After further discussion the Hearing Examiner asked what the Applicant would be allowed to do on the property if approval of the 2-COP license is granted. Mr. Pavese stated that they would be allowed to sell beer and wine in factory sealed containers, and people would be allowed to consume it on premises in the designated area.

Mr. Uhle asked what public interest would be served by selling packaged liquor, as opposed to non-packaged liquor, to which Mr. Pavese stated that he didn't feel the subject location was appropriate for a bar, in that it is surrounded by predominantly residential uses. In response to further questioning by Mr. Uhle, Mr. Pavese stated that Staff was concerned that people would tend to stay at the site longer if non-package liquor was sold.

Mr. Uhle referenced Condition 2 and stated that the outdoor seating area included the deck and the private beach located contiguous to the deck. He noted that the Staff Report did not make reference to the private beach area, and questioned what the rationale for this limitation was, to which Mr. Pavese replied that this also related to the intensity of the use. The County could not control how much seating is on the beach and how far it extends out into the area that is traversed by the public. In response to Mr. Uhle's question as to why Staff couldn't impose a setback condition, Mr. Pavese stated that the amount of seating is easier to control within an existing building or deck. This goes back to the intensity of the use. Staff also had to consider parking. The previous variance issued was conditioned to allow a certain type of use on this property. To allow the COP to encroach out into the beach area changes the intended use of the property. Mr. Uhle noted that the LDC does not require any particular parking for outdoor seating.

Mr. Uhle referred to the issue of the enforceability of the condition and asked Mr. Pavese if he has been to the beach lately, to which Mr. Pavese replied yes. He agreed that there are roped off areas indicating boundaries of property in this area and throughout the beach, and that this could be done fairly easily on the subject site. This would be an objective standard and could be enforceable if a setback of a particular distance was established.

Mr. Pavese agreed that the sandy beach area would be further away from the adjacent uses than the deck currently is, whether it was extended or not. However, as proposed by the Applicant, it is closer.

In response to further questioning by Mr. Uhle, Mr. Pavese confirmed that the beach area is frequently used for volleyball games, and for live entertainment. The impacts caused by someone consuming alcohol at a table on the surrounding areas is greater than the impact created by live music at the same location.

He also confirmed that the Applicant already has a license to sell alcohol off-site. Mr. Uhle asked Mr. Pavese if he could make the distinction in the regulations between "off-premises" and "on-premises"? Mr. Pavese stated that with regard to the licenses issued by the State, a 2 APS license permits the sale of alcoholic beverages (beer and wine) for consumption off the licensed premises. A 2-COP allows for the sale of beer and wine for consumption on the licensed premises.

Mr. Uhle stated that he really was asking for the definition of "on the premises." He noted that the building has residential units on the second floor. He asked if it would be considered "on-premises" if someone were to come down and buy a beer in a can and then go up to their residence and drink it, assuming the Applicant didn't have a COP at this location. Mr. Pavese replied, literally, this would be on-premises consumption, but with respect to the Zoning Ordinance, and the subject case, that was not really relevant. The on-premises consumption that Staff was referring to was on a licensed premises. Mr. Uhle stated that this was merely a hypothetical question. He asked if it would be a violation of the County regulations for someone to do that, to which Mr. Pavese replied no.

Mr. Uhle asked, hypothetically, if it would be considered "off-premises" if someone from one of the adjacent cottages were to walk over to the subject property, buy a beer, and walk back to their own property and drink it, to which Mr. Pavese replied yes.

Mr. Uhle asked if it would be a violation of County regulations for someone to buy a beer at the subject property, and drink next door assuming

they had permission to do, to which Mr. Pavese replied he believed it may be a violation of the open container law. Mr. Uhle stated that it would be private property; therefore, he did not believe the open container law would apply. He asked if selling beer to somebody who is consuming it on-premises would be a violation in terms of the zoning regulations, to which Mr. Pavese replied no.

In response to Mr. Uhle's questions with regard to Condition 4, Mr. Pavese confirmed that he was aware that live entertainment has been on the premises in the past. This particular condition would actually require the property owner to give up something he already has. The subject property is approximately 500 feet from the Lani Kai Resort. To the best of his knowledge the Lani Kai does have outdoor seating and COP. He was not sure if they had live entertainment.

With regard to the live entertainment on the subject property in the past, Mr. Pavese was not aware of outstanding allegations of code violations, or Noise Ordinance violations.

Mr. Uhle asked if a permit was required to have live entertainment on a piece of property, to which Mr. Pavese replied that he was not aware of any ordinance that would prohibit someone from playing a guitar or singing on a piece of property, if they weren't being compensated for it. Mr. Uhle asked if the condition would prohibit an adjacent property owner from having live entertainment. Mr. Pavese stated that he did not know of any ordinance that would prohibit an adjacent property owner from playing music on their property, unless they were charging admission.

Mr. Uhle asked if Condition 3 would also limit the hours of operation for live entertainment if live entertainment was allowed. Mr. Pavese stated that Condition 3 would not limit the hours for live entertainment because the time limitation is only related to the outdoor seating area. Mr. Uhle asked if it would be possible to write a condition that would limit the hours of outdoor entertainment if, in fact, the tranquility of the neighborhood at night is one of Staff's concerns, to which Mr. Pavese replied yes. Mr. Uhle asked if the tranquility of the neighborhood was one of Staff's concern, to which Mr. Pavese replied it was a minimal concern. The main reasoning for the condition related to the existing use and its intensity. Mr. Uhle noted that the intensity of the existing use involved live entertainment. Mr. Pavese stated that the County could not really control live entertainment being performed on the property if the people are not being charged admission, or the performers are not being compensated.

The Hearing Examiner asked if Staff was proposing that the Applicant be allowed to sell sealed containers of wine and beer to customers who will be allowed to drink them on the deck, to which Mr. Pavese replied yes. Staff has limited the hours of operation for the deck and prohibited live entertainment. This was a very minimal increase in the intensity of the use of the property. Staff believed that anything beyond that would be too great of an increase in intensity.

Carleton Ryffel, for the Applicant, stated that the subject property is located in a high activity level area near the Times Square area on the beach. Some adjacent and nearby uses include Gulf front seasonal rentals, a Hooters Restaurant, offices, and a variety of retail uses. The Lani Kai is approximately nine lots away from the subject property. Most of the lots along the gulf are 50-foot-wide lots, therefore, as Mr. Uhle stated, the subject property is approximately 500 feet away from the subject property.

The Applicant and/or his wife own six cottages immediately to the west of the subject property. To the east are other cottages which are seasonal rentals. The owner of the Tiki Klub lives in the cottage (under separate ownership) immediately adjacent to the subject property. Most of the cottages in the area cannot be rented on an annual basis due to the high level of activity in the area. This particular area of the island caters to young people and tourists. Most of the cottages are rented on a short

term basis. The ambiance of this area is a "party" atmosphere. This is where jet ski and other water sports abound, and volleyball is a common activity among younger people. The entire area is zoned C-1.

The Hearing Examiner stated that it might help him to know what the Applicant would like and why they believe their request should be approved. Mr. Ryffel stated that the Applicant would like to continue with the outdoor entertainment, which is something they already have. Mr. Uhle stated that the Applicant would also like to be allowed to use the private sandy beach area, located immediately south of the deck, for outdoor seating. He noted that he would be proposing an alternative condition to address this issue in the event the Hearing Examiner believed such a condition was necessary.

In terms of the sale of alcohol, the Applicant did not need a physical structure for a bar. However, they would like permission to be able sell draft beer out of kegs and to be able to keep wine in a refrigerator and pour into cups and be able to serve it. The Hearing Examiner asked if the Applicant wanted to have alcohol in bulk rather than individual containers, to which Mr. Uhle replied that was correct. The Hearing Examiner asked if there would be any indoor seating or area for patrons to consume alcohol, to which Mr. Uhle replied no.

Mr. Ryffel stated that there were several reasons the Applicant wanted to serve wine out of the bottle, however, as a practical matter, he has never seen wine come in a can. Serving wine or wine coolers in a bottle would mean there would be glass containers on the beach which is not appropriate for the type of activity in the area.

The property has evolved in use over the years. Long ago it was a duplex, and it remains a duplex upstairs. The downstairs was made into a beach clothing store, and then it became and remains the home base of jet ski, ultra-light boat rentals, sale of beach convenience items, i.e., sun glasses, T-shirts, suntan oil, and the package liquor store. In addition to these activities volleyball is played by anyone who walks by the property on the beach side. Televisions are available on the lower deck to watch sporting events. Live musical entertainment is provided on most weekends.

Mr. Ryffel submitted and reviewed several photographs (Applicant's Exhibits 1 through 13). These pictures depicted the front of the subject building, the view of Estero Boulevard (taken from the subject building), the upper and lower portions of the building, the sales counter and convenience items, the deck area, the television and scoreboard, and the outdoor seating area on the beach. He noted that Applicant's Exhibits 14 and 15 were also photographs which would be discussed later.

The Applicant has asked for 75 outdoor seats for COP which is reasonable considering the present activity level of the property. Some of the seating will be on the deck; the remainder on the sand. The Applicant intends to have the seating area on the sand within 50 feet of the back deck of the subject building. Mr. Ryffel submitted an as-built survey (Applicant's Exhibit 16) and pointed out the location where the Applicant wanted to have the outdoor seating.

As depicted on the as-built survey, the property line is 186 feet from the mean high tide to the road right-of-way of I Street. Between the existing building, and the 50-foot-wide area proposed for the outdoor seating on the sand, there is an additional 90 feet of private property before the water's edge. Even though the 90-foot-wide area is private property, the Applicant would limit the seating to the 50-foot-wide area. The 90-foot-wide area would not have any seating.

Mr. Ryffel submitted two photographs (Applicant's Exhibits 14 and 15) which depicted the 50-foot-wide area of sandy beach that will be used for seating. He referenced his letter to Pam Houck, dated October 15, 1995 (submitted with the application), and noted that it described the Applicant's response to the review criteria for a Special Permit. His letter states "the number of seats requested is 75, of which about 20 would be

on the adjoining ground level deck" As a correction to this statement Mr. Ryffel noted that, given the size of the deck, there would be room for approximately ten tables (40 seats). Therefore, Applicant did not want to be limited as to how many of the 75 seats they could put on the deck.

With regard to the second criteria of whether there are "changed or changing conditions which makes approval of the application appropriate," Mr. Ryffel noted that outdoor seating has become increasingly popular especially in tourist and beach areas which is the instant case. This would be considered a changing condition and one which would be consistent with this premise.

With regard to the question of whether the request is consistent with the goals, objectives, policies and intent of the Lee Plan. Mr. Ryffel noted that his letter lists approximately ten policies that the request is consistent with. With regard to Policy 18.2.1, his letter states:

Since the nature of the business and its outward appearance will not change, i.e., it was and continues to be a mixed commercial use, it will not be an intrusion into any residential neighborhood. In fact there really is no owner occupied neighborhood near the present use. The proposed use should be considered as a logical adjunct to the existing use of the property.

He referred to the criteria of whether the requested use will be compatible with the existing or planned uses, and stated that the property is in a mixed use area and it will, therefore, be compatible with other uses.

The location of the project will not place a greater burden upon existing transportation facilities than it has in the past. Allowing the uses may actually reduce trips. Moreover, the proposed use is intended to primarily serve customers already on the property. The Applicant has no advertising from Estero Boulevard. They do not intend to draw automobile traffic, in that parking would be a problem in this area. The Applicant's business relies on the pedestrian traffic along the beach.

With regard to Condition 2 which limits the outdoor seating to the outdoor deck area, the Applicant feels that there is no logical reason to not permit outdoor seating on a private beach owned by an individual. There is seating already provided during the daylight hours. People use these tables and chairs to watch sporting activities at the property, especially volleyball.

Outdoor seating with a COP occurs nearby at Jimmy B's (with outdoor entertainment) and at the Lani Kai where there is sometimes more than one band. The Lani Kai has approximately four bars, jet ski rentals, retail stores, and beach convenience items. Jimmy B's and the Lani Kai sell hard liquor, while the Applicant will only sell beer and wine. The recently approved application for the Jewell Real Estate property will allow outdoor seating and COP, and was approved for outdoor entertainment. The Applicant was not proposing a physical bar; they merely wanted to dispense beer and wine.

He referred to Condition 4 and stated that, given the location and the activity level of the area, there is no reason to prevent outdoor entertainment. There have been no noise complaints against this property to the best knowledge of the Applicant. There were no letters of opposition from neighbors, but rather letters of support. He asked "What then are we protecting?"

He submitted a map of the subject property (Applicant's Exhibit 17) which showed the location and names of all adjoining property owners. He noted that the following letter was written by the Applicant and signed by all the adjacent property owners. (See Section VIII.)

I am requesting a Special Permit in the C-1 (Commercial) district for consumption on premises with outdoor seating per Land Development Code Section 34-1264(a), at the above stated premises. I currently hold an alcohol license at this location,

I am simply expanding the usage. Because you are adjacent and/or very near to our operation, we are asking for your support.

The only property owner who did not sign the letter was the owner of the Outlaws Steakhouse. Mr. Ryffel believed that the only reason they didn't sign the letter was because they couldn't be found. He believed they would have signed because they were former clients of his.

Due to the support from all of the neighbors, outdoor entertainment should not be a problem. Outdoor entertainment has been an ongoing activity in the neighborhood. The Applicant will comply with the County Noise Ordinance, and wants to be treated as anyone else would. It should be noted that outdoor entertainment does not require permission or public hearings; just compliance with the law. The Applicant has agreed to limit the hours of outdoor entertainment from 10:00 a.m. to 10:00 p.m., as stated in the Staff Report. As a practical matter, the Applicant could set up a band on his adjacent property and have the same effect, because Staff's condition only applies to the subject property.

It was Mr. Ryffel's understanding that Special Permits are not discretionary unless a public harm is found. In this case Staff sees outdoor seating and music on a private beach as public harm. The Applicant feels that these things are a public good in that these activities are part of the beach lifestyle in this particular area. It probably wouldn't be appropriate in more purely residential areas away from this busy area. However, in a place where this type of activity is commonplace, it makes no sense to impose conditions that serve no purpose and are easily circumvented. In short, the young people and tourist guests need these types of places to recreate and socialize without these obstructions.

In response to Mr. Uhle's questions Mr. Ryffel stated that the subject property and surrounding properties are zoned C-1. Mr. Ryffel did not agree with Mr. Pavese's earlier statement that consumption on premises would have a greater impact than volleyball games and live music on surrounding uses. Volleyball games get fairly vocal since people cheer on the players. He did not think that sitting down and drinking a beer is a very noisy thing to do.

Mr. Ryffel confirmed that the location of the project would not place an undue burden on existing transportation facilities because the property is not readily visible from Estero Boulevard. It is a very integrated use of the property and it is well known. People normally come to this type of establishment on the weekends. To keep it "one stop shopping" would limit traffic impacts overall on the island.

Mr. Ryffel was not aware of any greater impact to the public if alcohol is poured into containers as opposed to being sold in packaged containers.

The Hearing Examiner asked if there was anything prohibiting outdoor seating at the subject property at this time, and whether the only difference in approval would be that people could drink alcohol in the outdoor seating area. Mr. Pavese replied that there are no regulations that prohibit people from sitting in chairs outside on the property at this time. There is also no prohibition against there being live entertainment.

Pam Houck, Division of Zoning and Development Services, referred to Mr. Ryffel's earlier statement and asked if there was a package store existing or anticipated at this site, to which Mr. Ryffel stated that, at this time, the Applicant has a package license and they sell beer in cans. Mrs. Houck noted that a package store has different regulations. While it may be permitted in this district, it does have a specific 500-foot setback requirement from residential uses, day-care centers, churches, etc., and would not be allowed unless a variance were granted. A variance has not been requested for the subject property in the past or in this case. She wanted to make it clear whether or not a package store was indeed on the premises or anticipated. Mr. Ryffel stated that the

Applicant sells canned beer which is in a cooler. Mrs. Houck stated that the Applicant would be allowed to have incidental sales of packaged alcoholic beverages.

The Hearing Examiner asked Mrs. Houck if she was making the distinction between a liquor store or package store that sells primary beer and wine, as opposed to one that sells it in conjunction with other items. Mr. Ryffel noted that the Applicant has a package license, rather than a package store. Mrs. Houck pointed out that this was specifically defined in Section 34-1263, the Zoning Ordinance portion of the LDC.

Case 95-05-101.02S (Jimmy B's) was specifically approved as a bar. Case 95-07-161.02S (Jay Ursoleo) was specifically approved as a restaurant. Staff's primary concern, and the reason they limited the subject request by conditions, was because this case was heard previously and granted variance for specific uses. Staff's primary concern related to changing the use of the property to a bar or a restaurant, in that there was no place for parking at the site. The approved variances were not in place for these uses and variances have not been requested.

The Hearing Examiner stated that if the Applicant had come in for a variance, or just consumption on premises, there is no parking requirement for outdoor seating. Mrs. Houck stated that Staff's concern related to a change of use. If the use is changed to a bar, although there would be no parking requirements, a Special Permit would be required for a bar. The Hearing Examiner asked if Staff believed the use would be considered a bar if there was outdoor seating on the beach and on the deck area, but not inside the premises, to which Mrs. Houck replied not necessarily.

In response to the Hearing Examiner's question, Mrs. Houck confirmed that it was possible due to the increase in the use of alcohol on the premises a variance would be required. The Hearing Examiner stated that the concern was that normally a variance would be needed to obtain the other permission. This may be inadvertently intensifying the use of the property to the level where a variance would have been required, and it has not been required in this case.

Mr. Ryffel stated that the use is not intended to be a bar. The Applicant would be selling beer and wine like they would sell sunglasses or another convenience item. The activity includes volleyball and music and he did not feel the request would make any change in intensity at all. If there is an area that should be intense, this was it. Intense uses had to be somewhere, and he could not see why Staff would try to diminish that at this point in the area's history.

Mr. Uhle noted that the variety of mix of uses on the parcel would remain essentially the same. There was no obvious distinction in terms of the impacts with regard to how the alcohol is sold to people walking on the beach or people living in the beach cottages. He did not believe there was any credible evidence to indicate there was any distinction. In addition, the Applicant has established that outdoor seating does not require any additional parking. Furthermore, there is every reason to believe that, if there is an increase in use of this parcel, it is probably going to be caused by people walking along the beach because the parcel is not readily visible from Estero Boulevard and there is no signage on Estero Boulevard. Approval of this request would not result in a tremendous change in the character of the area.

Mr. Uhle stated that he has heard concerns from the Staff, but he has not heard any specific facts or specific LDC requirements that causes the problem that they are concerned about.

The Hearing Examiner asked if a customer would have go into the store to get a drink, or if someone would be serving them outside, and Mr. Uhle stated there would be no service outside. The Hearing Examiner noted that, if he were to approve the request, he would place this type of prohibition on the use. Mr. Ryffel stated that there would be no wait staff.

In response to the Hearing Examiner's question, Mrs. Houck stated that someone would be prohibited from bringing alcohol onto the subject property that they bought elsewhere. Even though it is private property, the Applicant is not licensed for consumption on premises and the use is a retail outlet rather than a private home.

Mr. Uhle stated that County regulations regarding this point are not particularly clear. One of the reasons he asked the hypothetical questions of Mr. Pavese was to indicate that a number of anomalies could come up that really don't have any bearing in terms of the actual impacts of the proposed use on the surrounding neighborhood.

In response to the Hearing Examiner's questions regarding the conditions, Mr. Uhle stated that the Applicant would like to be able to operate their business in the manner describe earlier with the sale of wine and beer by the glass. They would like to keep bottles of wine in a refrigerator and have kegs of beer. They were not asking for a physical structure or for permission to have outside service.

With regard to Condition 2 the Applicant would like a condition that would basically permit the outdoor seating to take place, not simply within the deck, but in an area with the northern boundary being the southernmost boundary of the deck, and then extending 50 feet to the south of that. The Applicant would not have a problem marking that area off. This was an objective standard and one that could be enforced.

If the Staff believes that Condition 3 is not clear enough as to its applicability to outdoor music, the Applicant did not have a problem limiting the hours from 10:00 a.m. to 10:00 p.m. However, Condition 4, needs to be deleted, in that it is "costing" the Applicant a use that they already have. In response to the Hearing Examiner's question, Mr. Uhle stated that it would be appropriate to add language stating that the subject conditions would not conflict with the conditions of the previous variance approval.

Gerald Crowley, property owner of a cottage located approximately 200 feet from the subject property, stated that he believed the COP would be more suitable than the current way the property operates. Currently, people who buy beer at the premises go over to his yard and throw the empty cans over their head. If the consumption was constricted to the area of purchase, this would not happen.

With regard to the hours for outdoor entertainment, he believed 10:00 p.m. was a bit late. He rents to older couples three to four months out of the year. The County shuts down the beach at sunset. There are signs at the access that state that the beach closes at sunset. Therefore, sunrise to sunset would seem like more suitable hours for live entertainment. The Hearing Examiner stated that the hours of sunrise and sunset would vary on the season, to which Mr. Crowley replied yes. Someone might want to go to bed at 8:00 p.m. when the sun goes down at 5:00 p.m.

The Hearing Examiner asked Mr. Crowley if the people staying at this place had any problem with the noise, to which he replied currently his place is not rented. However, last Sunday he was sitting approximately 200 feet from the band and he could not listen to a football game on his television. He had the volume all the way up and he could not hear it. He never received one of the letters that Mr. Ryffel referenced.

Lonnie Clark, Applicant's partner, stated that they did not want to create any noise problem for any of the neighbors. They would be happy to work with any suggestions to correct any problems. Within the immediate vicinity, including Mr. Crowley's property, all the owners have jet ski businesses. These type of businesses allow for motors to be run on the beach. All of the jet ski businesses create noise situations. He did not believe that the music situation would create any additional problem than what is currently going on. He enjoyed having Mr. Crowley as a neighbor and he would certainly be willing to comply with conditions that would create a situation where everyone would be happy.

Mr. Pavese concurred with Mrs. Houck's previous statement. To Staff's knowledge there is no package store existing at the subject location. The uses at Jimmy B's and the Lani Kai are really not comparable to the use on the subject property; they are totally different. The intensity is also not comparable.

The Hearing Examiner asked Mr. Pavese if he prepared the Staff Report, and if it accurately reflected his position at the time he prepared it, to which Mr. Pavese replied yes. He asked Mr. Pavese if anything he had heard during the hearing would change his mind about his recommended conditions, and Mr. Pavese replied no. This included the live entertainment condition, especially in light of what Mr. Crowley has stated.

Mr. Uhle submitted copies of the Hearing Examiner's Decisions for cases 95-05-101.02S and 95-07-161.02S (Applicant's Exhibits 18 and 19), both of which permit outdoor entertainment, but restrict the hours in a way that is consistent to what has been proposed. The Applicant has also indicated that she would not object to limiting the hours of outdoor entertainment to 8:00 p.m., but not the hours of operation.

He could understand where the Staff was coming from in this case, but he believed they were talking about an abstract regulatory kind of problem rather than a practical problem. As depicted in the photographs, this is an area of very intense uses. He did not think that the Staff's proposed conditions address any significant legal or practical problems that would be created by the use of this location.

Mr. Ryffel stated that he had never had a case where there has been so much neighborhood cooperation. No one objected, and he felt that this spoke for itself. He asked if they could have the Hearing Examiner's Decision in as timely a manner as possible, given the situation at the beach, specifically by December 31, 1995.

The Hearing Examiner stated that he did not see a big distinction between the sale of beer and wine in bulk as opposed to in an individual container. He would, however, visit the site before making his final decision.

Mr. Ryffel noted that the property owner had cleaned up the property considerably since he bought it. He has placed 22 garbage cans, even on property that wasn't his, as a way of keeping the area clean. The owners are very good and competent people. He felt they would cooperate with any problems the neighbors may have and he felt they were an asset to the beach. The Hearing Examiner pointed out, however, that the property owner could sell the property and the next people who come in may not be so nice. This was a consideration since any approval would run with the land.

Mr. Ryffel submitted a copy of his presentation and notes (Applicant's Exhibit's 20) for the record.

VII. PUBLIC PARTICIPATION: The following persons appeared at the hearing or became "parties of record" in this case by submitting written materials:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Matt UHLE, Esquire, c/o Humphrey & Knott, P.A., 1625 Hendry St., Ft. Myers, FL 33901
Testimony: See Section VI. Presentation Summary

ADDITIONAL COUNTY STAFF:

1. Joseph M. MADDEN, Jr., Assistant County Attorney, Lee County, P.O. Box 398, Ft. Myers, FL 33902-0398
2. Pam HOUCK, Division of Zoning and Development Services, Lee County, P.O. Box 398, Ft. Myers, FL 33902-0398

FOR:

1. Terry HILL, 1600 Estero Blvd., Ft. Myers Bch., FL 33931
2. ESTERO ISLAND HARDWARE, 1741 Estero Blvd., Ft. Myers Bch., FL 33931
3. H. E. TRACY, 71 Ave. E., Ft. Myers Bch., FL 33931
4. Jeffery M. WILLICH, 4870 Dolphin Ln., Ft. Myers Bch., FL 33931
5. Marc WOODARD, 4265 Bay Beach Ln., Ft. Myers Bch., FL 33931
6. Kenny CATHERS, 1830 Estero Blvd., Ft. Myers Bch., FL 33931
7. SPORTS ADDICTION, 1801 Estero Blvd., Ft. Myers Bch., FL 33931
8. Antonina RIGBY, 307 Fairweather Ln., Ft. Myers Bch., FL 33931
9. GLORIA SHORTLIDGE ESTATE, 70 Ave. E., Ft. Myers Bch., FL 33931
10. FT. MYERS BEACH SCOOTERS, INC., 1698 Estero Blvd., Ft. Myers Bch., FL 33931

AGAINST: NONE

GENERAL:

1. Robert MOFFA, 37728 Lois Dr., Sterling Heights, MI 48310
2. Denise FAIR, c/o Humphrey & Knott, P.A., 1625 Hendry St., Ft. Myers, FL 33901
3. Richard CROWLEY, 808 Sunset Vista Dr., Ft. Myers Bch., FL 33931
Testimony: See Section VI. Presentation Summary.

VIII. LEGAL DESCRIPTION:

Lot 11, Block B, CRESCENT BEACH SUBDIVISION, as recorded in Plat Book 4, Page 45 of the Public Records of Lee County, Florida, lying in Section 19, Township 46 South, Range 24 East, Lee County, Florida.

IX. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, special permits, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff] [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication ... [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the hearing examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

X. APPEALS:

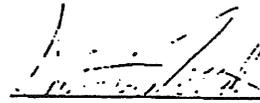
This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered.

XI. COPIES OF TESTIMONY AND TRANSCRIPTS:

A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the Official Court Reporter, 20th Judicial Circuit, Lee County Justice Center, Fort Myers, Florida. The original documents and original file in connection with this matter are located at the Lee County Department of Community Development, 1831 Hendry Street, Fort Myers, Florida.

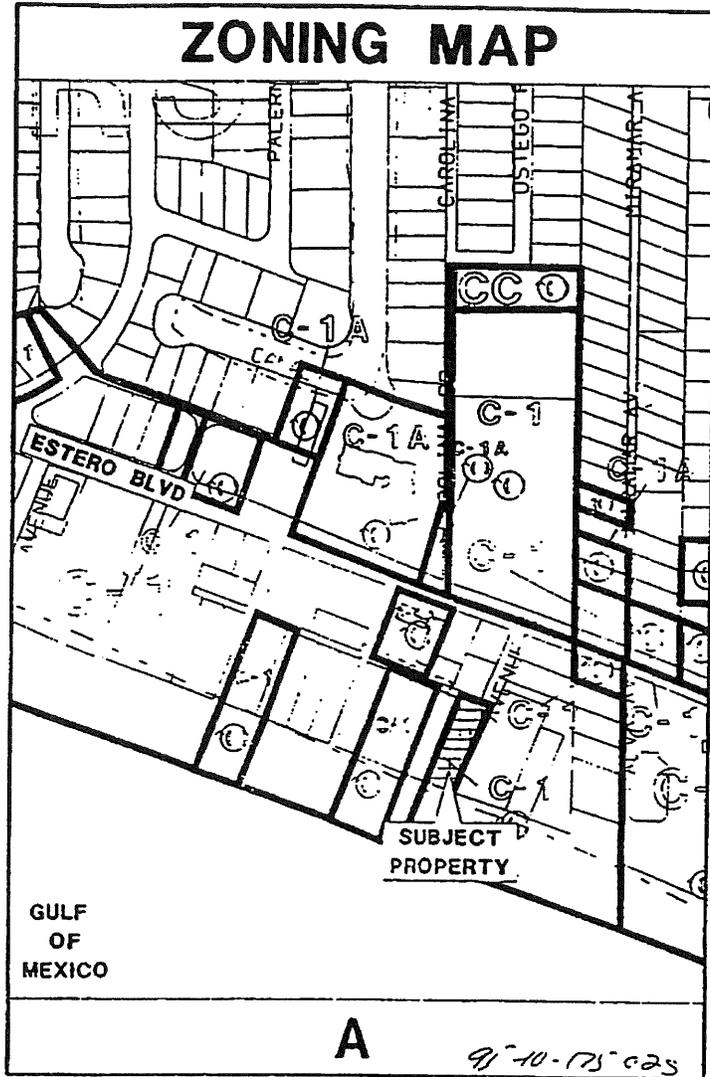
B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 18th day of December, 1995. Copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.



SALVATORE TERRITO
LEE COUNTY HEARING EXAMINER
2269 Bay Street
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 941/338-3190

ZONING MAP



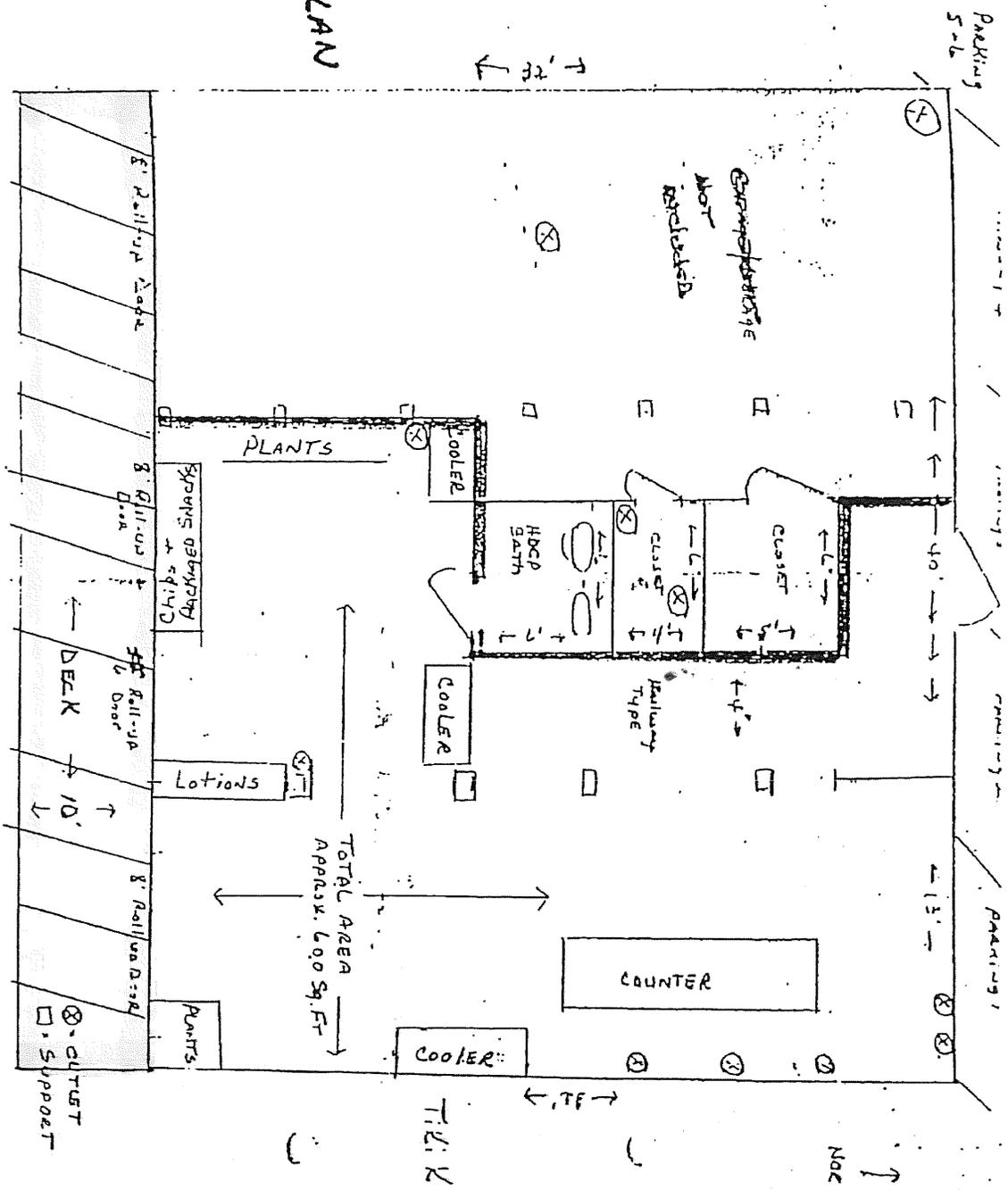
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91-10-175-025

www.cityofhialeah.com

SC 2011-01-10

GROUND FLOOR PLAN



B

← TF →

PARKING 5-6

HOT RECYCLED

PLANTS

COOLER

HDCP BATH

CLOSET

CLOSET

COOLER

COUNTER

COOLER

TILE

NOR

8' Rail-up Deck

8' Rail-up Deck

8' Rail-up Deck

Lotions

PARTS

CLUTTER SUPPORT

TOTAL AREA APPROX. 600 Sq. Ft.

← 40' →

← 13' →

← 10' →

← TF →

DATE

TRANSMITTAL SHEET FOR SCANNING

SAVE AS

ADDRESS w/ DATE 166B I Street

OR

PROJECT OR CASE NO. 95-10-173025 COP

DESCRIPTION _____

5037

DBPR ABT-6035 - Division of Alcoholic Beverages and Tobacco Application for Transfer of Ownership of an Alcoholic Beverage License

TREASURER OF FLORIDA-DBPR
BT 7039856
VAL 70508710
AMT \$206.50
DEPOSIT ONLY 06/11/2008
LOG7900407

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION

NOTE - This form must be submitted as part of an application packet

If you have any questions or need assistance in completing this application, please contact the Department of Business and Professional Regulation or your local district office. Please submit your completed application and required fee(s) to your local district office. This application may be submitted by mail, through appointment, or it can be dropped-off. A District Office Address and Contact Information Sheet can be found on AB&T's page of the DBPR web site at the link provided below.

http://www.myflorida.com/dbpr/abt/district_offices/licensing.html

SECTION 1: CHECK TRANSACTION REQUESTED	
Trade Name (D/B/A) <i>The Beach Pub</i>	
Transaction Type:	
<input checked="" type="checkbox"/> Transfer of Ownership	<input type="checkbox"/> New Retail Tobacco Products Permit
<input type="checkbox"/> Change of Location	
<input type="checkbox"/> Change of Business Name	
<input checked="" type="checkbox"/> Change of Officers/Stockholders	
<input type="checkbox"/> Change in Series	Do you wish to purchase a Temporary License?
<input type="checkbox"/> Decrease in Series	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Increase in Series	
Series Requested <i>2 COP</i>	Type Requested <i>Tobacco Dual License</i>
SECTION 2: CHECK LICENSE CATEGORY	
<input checked="" type="checkbox"/> Retail Alcoholic Beverages	<input type="checkbox"/> Alcoholic Beverage Broker Sales Agent
<input type="checkbox"/> Beer/Wine/Liquor Wholesaler	<input type="checkbox"/> Alcoholic Beverage Manufacturer
<input type="checkbox"/> Alcoholic Beverage Importer	

4006 - 168711

4090 - 189915

SECTION 3. LICENSE INFORMATION

If the applicant is a corporation or other legal entity, enter the name as registered with the Secretary of State on the line below.

Full Name of Applicant Sand + Sun, LLC Corporate Document # 208000044787

Trade Name (D/B/A) The Beach Pub

FEIN Number or Social Security Number* 26-2550011 Business Telephone Number 239-765-6102

Contact Person LOUIS CALECA Phone Number 239 246 1219

Location Address (Street and Number) 1668 F ST.

City FORT MYERS BEACH County LEE State FL Zip Code 33931

Mailing Address (Street or P. O. Box) 4540 SE. 11 AVE

Section / Name (Attention - Optional)

City CAPE CORAL State FL Zip Code 33904

Current Business Name THE BEACH PUB Current License Number BEV 4605678

If this application is for the transfer of this license, is the transfer due to revocation proceedings?
 Yes No

If yes, is there any personal relationship to the transferor?
 Yes No

If yes, explain the relationship:

408103

SECTION 4 - PARTNER, OFFICER, STOCKHOLDER PERSONAL INFORMATION						
This section must be completed for each applicant or person(s) directly connected with the business, unless they are current licensees.						
1.	Trade Name (D/B/A) <i>The beach Pub</i>					
2.	Full Name <i>John Timothy Miller</i>					
	Social Security Number		Home Phone Number		Date of Birth	
	[REDACTED]		<i>812-360-1026</i>		<i>11-2-49</i>	
	Race	Sex	Height	Weight	Eye Color	Hair Color
	<i>C</i>	<i>M</i>	<i>5'8"</i>	<i>240</i>	<i>Br</i>	<i>Grey</i>
3.	Are you a U.S. citizen? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, immigration card number or passport number:					
4.	Home Address (Street and Number) <i>314 W. 4th St., APT 400</i>					
	City <i>Bloomington</i>			State	Zip Code	
				<i>IN</i>	<i>47404</i>	
5.	Do you currently own or have an interest in any business selling alcoholic beverages, wholesale cigarette or tobacco products, or a bottle club? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below. The location address should include the city and state.					
	Trade Name (D/B/A)			License Number		
	Location Address					
6.	Have you ever had any type of alcoholic beverage, or bottle club license, or cigarette, or tobacco permit refused, revoked or suspended anywhere in the past 15 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below. The location address should include the city and state.					
	Trade Name (D/B/A)			License Number		
	Location Address					
7.	Have you been convicted of a felony or an offense involving alcoholic beverages anywhere? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide the information requested below and provide a Certified Copy of the Arrest Disposition, as requested in the Application Requirements checklist.					
	Date		Location			
	<i>11/95 ; 5/03</i>		<i>OHIO / Indiana</i>			
	Type of Offense <i>DUI / OVI (See Attached)</i>					
8.	Have you ever been arrested or issued a notice to appear in any state of the United States or its territories? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below and a CERTIFIED COPY OF THE DISPOSITION. Attach additional sheet if necessary.					
	Date		Location			
	Type of Offense					

9 Are you an official with State police powers granted by the Florida Legislature?
 Yes No
 If yes, provide details:

NOTARIZATION STATEMENT

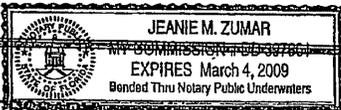
"I swear under oath or affirmation under penalty of perjury as provided for in Sections 559.791, 562.45 and 837.06, Florida Statutes, that I have fully disclosed any and all parties financially and or contractually interested in this business and that the parties are disclosed in Section 12 of this application. I further swear or affirm that the foregoing information is true and correct."

STATE OF Florida

COUNTY OF Lee John T. Miller
 APPLICANT SIGNATURE

The foregoing was () Sworn to and Subscribed OR () Acknowledged Before me this 2 Day
 of June, 2008, By John T. Miller who is () personally known
 to me OR () who produced N/A as identification.

Jennie M. Zumar
 Notary Public Commission Expires: 3-4-2009



(ATTACH ADDITIONAL COPIES AS NECESSARY)

*** Social Security Number**
 Under the Federal Privacy Act, disclosure of Social Security numbers is voluntary unless a Federal statute specifically requires it or allows states to collect the number. In this instance, disclosure of social security numbers is mandatory pursuant to Title 42 United States Code, Sections 653 and 654; and sections 409.2577, 409.2598, and 559.79, Florida Statutes. Social Security numbers are used to allow efficient screening of applicants and licensees by a Title IV-D child support agency to assure compliance with child support obligations. Social Security numbers must also be recorded on all professional and occupational license applications and are used for licensee identification pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), 104 Pub.L.193, Sec. 317. The State of Florida is authorized to collect the social security number of licensees pursuant to the Social Security Act, 42 U.S.C. 405(c)(2)(C)(i). This information is used to identify licensees for tax administration purposes.

408104

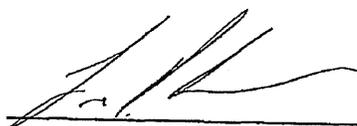
SECTION 4 - PARTNER, OFFICER, STOCKHOLDER PERSONAL INFORMATION							
This section must be completed for each applicant or person(s) directly connected with the business unless they are current licensees.							
1.	Trade Name (D/B/A) <i>THE BEACH PUB</i>						
2.	Full Name <i>LOUIS ANTHONY CALECA</i>						
	Social Security Number*			Home Phone Number		Date of Birth	
	[REDACTED]			<i>239 246 1219</i>		<i>4 17 59</i>	
	Race	Sex	Height	Weight	Eye Color	Hair Color	
	<i>W</i>	<i>M</i>	<i>6'</i>	<i>165</i>	<i>BROWN</i>	<i>GRAY</i>	
3.	Are you a U.S. citizen? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, immigration card number or passport number.						
4.	Home Address (Street and Number) <i>4540 S.E. 11 AVE.</i>						
	City <i>CAPE CORAL</i>				State <i>FL</i>	Zip Code <i>33904</i>	
5.	Do you currently own or have an interest in any business selling alcoholic beverages, wholesale cigarette or tobacco products, or a bottle club? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below. The location address should include the city and state.						
	Trade Name (D/B/A)			License Number			
	Location Address						
6.	Have you ever had any type of alcoholic beverage, or bottle club license, or cigarette, or tobacco permit refused, revoked or suspended anywhere in the past 15 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below. The location address should include the city and state.						
	Trade Name (D/B/A)			License Number			
	Location Address						
7.	Have you been convicted of a felony or an offense involving alcoholic beverages anywhere? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, provide the information requested below and provide a Certified Copy of the Arrest Disposition , as requested in the Application Requirements checklist						
	Date		Location				
	Type of Offense						
8.	Have you ever been arrested or issued a notice to appear in any state of the United States or its territories? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide the information requested below and a CERTIFIED COPY OF THE DISPOSITION . Attach additional sheet if necessary:						
	Date <i>1978</i>		Location <i>HOLY MICH.</i>				
	Type of Offense <i>CONCEALED WEAPON CHARGE (REDUCED TO MISDEMEANOR DISORDERLY PERSON RECORD EXPUNGED 1981 SEE ATTACHMENT.)</i>						

9 Are you an official with State police powers granted by the Florida Legislature?
 Yes No
 If yes, provide details

NOTARIZATION STATEMENT

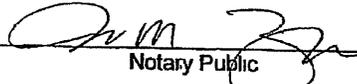
"I swear under oath or affirmation under penalty of perjury as provided for in Sections 559.791, 562.45 and 837.06, Florida Statutes, that I have fully disclosed any and all parties financially and or contractually interested in this business and that the parties are disclosed in Section 12 of this application. I further swear or affirm that the foregoing information is true and correct."

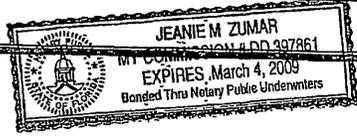
STATE OF FL

COUNTY OF LEE 

APPLICANT SIGNATURE

The foregoing was () Sworn to and Subscribed OR () Acknowledged Before me this 30 Day
 of May, 2008, By Louis Caleca who is () personally known
 to me OR () who produced _____ as identification


 Notary Public Commission Expires 3-4-2009



(ATTACH ADDITIONAL COPIES AS NECESSARY)

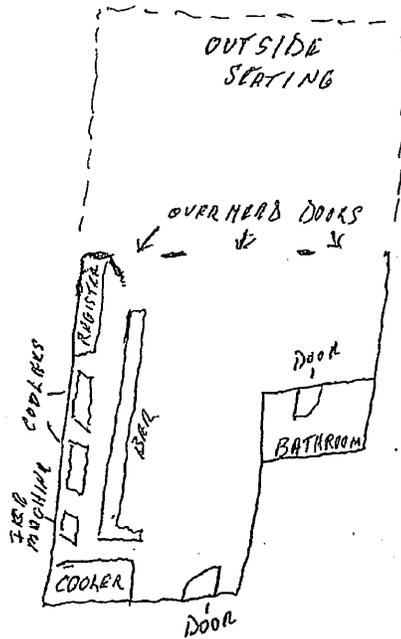
*** Social Security Number**
 Under the Federal Privacy Act, disclosure of Social Security numbers is voluntary unless a Federal statute specifically requires it or allows states to collect the number. In this instance, disclosure of social security numbers is mandatory pursuant to Title 42 United States Code, Sections 653 and 654; and sections 409.2577, 409.2598, and 559.79, Florida Statutes. Social Security numbers are used to allow efficient screening of applicants and licensees by a Title IV-D child support agency to assure compliance with child support obligations. Social Security numbers must also be recorded on all professional and occupational license applications and are used for licensee identification pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), 104 Pub L.193, Sec. 317. The State of Florida is authorized to collect the social security number of licensees pursuant to the Social Security Act, 42 U.S.C. 405(c)(2)(C)(i). This information is used to identify licensees for tax administration purposes.

SECTION 5 - DESCRIPTION OF PREMISES TO BE LICENSED
AB&T AUTHORIZED SIGNATURE REQUIRED

Trade Name (D/B/A)

The beach Pub

1. Yes No Is the proposed premises movable or able to be moved?
2. Yes No Is there any access through the premise to any area over which you do not have dominion and control?
3. Neatly draw a floor plan of the premises in ink, including sidewalks and other outside areas which are contiguous to the premises, walls, doors, counters, sales areas, storage areas, restrooms, bar locations and any other specific areas which are part of the premises sought to be licensed. A multi-story building where the entire building is to be licensed must show each floor plan. **No architectural drawings are accepted.**



DBPR Authorized Signature _____ Date _____

Approved Disapproved

Comments _____

SECTION 6 SALES TAX
TO BE COMPLETED BY THE DEPARTMENT OF REVENUE

Trade Name (D/B/A) The beach Pub

The named applicant for a license/permit has complied with the Florida Statutes concerning registration for Sales and Use Tax.

- 1 This is to verify that the current owner as named in this application has filed all returns and that all outstanding billings and returns appear to have been paid through the period ending Apr 2008 or the liability has been acknowledged and agreed to be paid by the applicant. This verification does not constitute a certificate as contained in Section 212 10 (1), Florida Statutes (Not applicable if no transfer involved).
- 2 Furthermore, the named applicant for an Alcoholic Beverage License has complied with Florida Statutes concerning registration for Sales and Use Tax, and has paid any applicable taxes due.

Signed Kan Bledsoe Date 6-2-08

Title BSI

Department of Revenue Stamp:

008 JUN -2 A 0:35
RECEIVED
DEPT. OF REVENUE

APPROVED BY
DEPARTMENT OF REVENUE
Kan Bledsoe

SECTION 7 - ZONING			
TO BE COMPLETED BY THE ZONING AUTHORITY GOVERNING YOUR BUSINESS LOCATION			
Trade Name (D/B/A) <u>The beach pub</u>			
Street Address <u>1668 I ST</u>			
City <u>FT Myers beach</u>	County <u>lee</u>	State <u>FL</u>	Zip Code <u>33931</u>
Are there outside areas which are contiguous to the premises which are to be part of the premises sought to be licensed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If this application is for issuance of an alcoholic beverage license where zoning approval is required, the zoning authority must complete "A" and "B" If zoning is not required, the applicant must complete section "B"			
A. The location complies with zoning requirements for the sale of alcoholic beverages or wholesale tobacco products pursuant to this application for a Series <u>2COR</u> license			
Signed <u>[Signature]</u>		Date <u>May 23, 2008</u>	
Title <u>Zoning Coordinator</u>		Lee County HEX case # <u>95-10-173-028</u>	
B Is the location within limits of an "Incorporated City or Town?" <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, enter the name of the city or town: <u>Town of Fort Myers Beach</u>			

SECTION 8 - HEALTH			
TO BE COMPLETED BY THE DIVISION OF HOTELS AND RESTAURANTS OR COUNTY HEALTH AUTHORITY OR DEPARTMENT OF HEALTH OR DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES			
Trade Name (D/B/A) <u>The beach pub</u>			
Street Address <u>1668 I ST</u>			
City <u>FT Myers beach</u>	County <u>lee</u>	State <u>FL</u>	Zip Code <u>33931</u>
The above establishment complies with the requirements of the Florida Sanitary Code.			
Signed <u>[Signature]</u>		Date <u>6/2/08</u>	
Title <u>ES II</u>		Agency <u>DOH</u>	

SECTION 12 - DISCLOSURE OF INTERESTED PARTIES

Note: Failure to disclose an interest, direct or indirect, could result in denial, suspension and/or revocation of your license.

Trade Name (D/B/A)

The Beach Pub

1. List below the names, titles and percentage of stock held for all officers, directors, stockholders, managing members and general partners of the corporation or other legal entity for which this license or permit is being sought. Attach extra sheets if necessary. If the applicant is a limited partnership or limited liability company, attach a list of all limited partners and members.

Title/Position	Name	Stock %
President	<i>John Timothy Miller</i>	<i>50.6%</i>
Vice President	<i>Louis Anthony Coleca</i>	<i>49%</i>
Secretary		
Treasurer		
Director(s)		
Stockholder(s)	<i>Marta R. Miller</i>	<i>.4%</i>
Managing Member(s)		
General Partner(s)		

2. Are there any persons not listed above who have guaranteed or co-signed a lease or loan, or any person or entity who has loaned money to the business that is not a traditional lending institution?
 Yes No

If yes, you must list the person(s) or entity and indicate which of the below applies.

Name	Guarantor	Co-signer	Lender	Interest Rate (List)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION 13 - AFFIDAVIT OF APPLICANT
NOTARIZATION REQUIRED

Trade Name (D/B/A) The Beach Pub

"I, the undersigned individually, or if a corporation for itself; its officers and directors, hereby swear or affirm that I am duly authorized to make the above and foregoing application and, as such, I hereby swear or affirm that the attached sketch or blueprint is substantially a true and correct representation of the premises to be licensed and agree that the place of business, if licensed, may be inspected and searched during business hours or at any time business is being conducted on the premises without a search warrant by officers of the Division of Alcoholic Beverages and Tobacco, the sheriff, his deputies, and police officers for the purposes of determining compliance with the beverage and cigarette laws."

"I swear under oath or affirmation under penalty of perjury as provided for in Sections 559.791, 562.45 and 837.06, Florida Statutes, that I have fully disclosed any and all parties financially and or contractually interested in this business and that the parties are disclosed in section 12 of this application. I further swear or affirm that the foregoing information is true and correct."

STATE OF Florida

John T Miller
APPLICANT SIGNATURE

COUNTY OF Lee

APPLICANT SIGNATURE

The foregoing was () Sworn to and Subscribed OR () Acknowledged Before me this 2 Day of June, 2008, By John T Miller who is () personally known to me OR () who produced N/A as identification

Jeanie M. Zumar
Notary Public



Expires: 3-4-2009

P

SECTION 14 - AFFIDAVIT OF TRANSFEROR
NOTARIZATION REQUIRED

Trade Name (D/B/A)

The Beach Pub

I, the undersigned, hereby swear or affirm that I am duly authorized to make this affidavit and do hereby consent, on my behalf or on behalf of the transferor, to the above transfer, and represent to the Division of Alcoholic Beverages and Tobacco that the license which is being transferred is as shown in the application and that a bona fide sale in good faith has been made to the within applicant of the business for which the foregoing transfer of license is sought.

STATE OF Florida

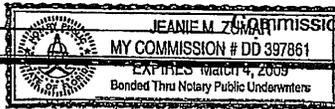
Paul Stort
TRANSFEROR OR AUTHORIZED OFFICER SIGNATURE

COUNTY OF Lee

Karen Stort
TRANSFEROR OR AUTHORIZED OFFICER SIGNATURE

The foregoing was () Sworn to and Subscribed OR Acknowledged Before me this 2 Day of June, 2008, By Paul Stort & Karen Stort who is (personally known to me OR () who produced N/A as identification.

Jamie Z...
Notary Public



Expires: 3-4-2009

FOR DIVISION USE ONLY - DO NOT WRITE BELOW THIS LINE	
Trade Name (D/B/A)	
CODE: City County	FEIN NUMBER
TYPE	FEE
	TOTAL
Approved by _____ Date _____ Audited: _____ Unaudited: _____	
District Office Received Date Stamp	District Office Accepted Date Stamp
RECEIVED JUN 11 2008	ACCEPTED FOR PROCESSING JUN 11 2008 <small>FLORIDA DEPARTMENT OF REVENUE FORT MYERS LICENSING</small>

DIV OF ABT
FORT MYERS LICENSING