

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2000-06

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF FORT MYERS

WHEREAS, Saxe on the Beach has filed an application for a Special Permit in the C-1 (Commercial) district for consumption on premises (a 2COP license – beer and wine) for a group III restaurant with outdoor seating per LDC Section 34-1264 (a)(2)a.2.; and

WHEREAS, the subject property is located at 1901 Estero Blvd., Fort Myers Beach, Florida, and is described more particularly as: Section 19, Township 46 South, Range 24 East.

WHEREAS, the applicant has indicated the property's current STRAP number are: 19-46-24-W4-0090B.0080 0; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on February 15, 2000 and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons.

NOW, THEREFORE BE IT RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

That the LPA recommends that the Town Council approve the request for a Special Permit for Consumption on Premises with the conditions 1,2,3,4,5,7 and 8 as enumerated on Page 2 of the Staff Report, dated February 7, 2000, which is attached hereto and incorporated herein by reference. Condition # 6 is changed as follows; "Live outdoor music, entertainment and piped music is prohibited. Indoors, live music is prohibited and any piped indoor music must be contained so that the music cannot be heard outside the restaurant". A new condition #9 is added to read as follows; "The restaurant may not sell alcohol after 10 PM".

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Jody Hester and seconded by LPA Member Jennifer Kaestner, and, upon being put to a vote, the result was as follows:

|                   |         |
|-------------------|---------|
| Jennifer Kaestner | yes     |
| Dave Smith        | yes     |
| Rod Vayo          | absent  |
| Betty Simpson     | yes     |
| Roxie Smith       | yes     |
| Bill Van Duzer    | abstain |
| Jodi Hester       | yes     |
| Linda Beasley     | yes     |
| Harold Huber      | yes     |

DULY PASSED AND ADOPTED THIS 15th day of February, 2000.

ATTEST;

By: Maureen Segal-George

LPA of the Town of Fort Myers Beach

By: Roxie Smith  
Roxie Smith, Chairman

**FT. MYERS BEACH, FLORIDA  
DEVELOPMENT SERVICES DIVISION  
STAFF REPORT**

**TYPE OF CASE:** Special Permit

**CASE NUMBER:** COP2000-00001

**FORT MYERS BEACH LPA DATE:** February 15, 2000

**TIME:** 12:00 Noon

**I. APPLICATION SUMMARY:**

**A. Applicant:** Saxe on the Beach

**B. Request:** A special permit in the C-1 (Commercial) district for consumption on premises (a 2COP license for beer and wine) for a group III restaurant with outdoor seating per Land Development Code section 34-1264(a)(2)a.2.

**C. Location:** The subject property is located at 1901 Estero Blvd., Ft. Myers Beach, in S19-T46S-R24E, Lee County, FL. (District #3)

**D. Land Use Plan Designation:** Pedestrian Commercial

**E. Surrounding Land Use:**

| <u>Existing Use &amp; Zoning</u>   | <u>Future Land Use Map</u> |
|--|----------------------------|
| North: Developed single-family residential, zoned RS-1                                     | Mixed Residential          |
| East: 25 foot walkway, then vacant commercial development used as a parking lot, zoned CPD | Pedestrian Commercial      |
| South: Estero Boulevard then commercial development, zoned C-1                             | Pedestrian Commercial      |
| West: Ohio Avenue then commercial development, zoned C-1                                   | Pedestrian Commercial      |

## II. BACKGROUND INFORMATION AND RECOMMENDATION:

### A. Recommendation: APPROVE with the following conditions

#### Conditions

1. The consumption on premises is limited to a 2-COP beverage license to be used in conjunction with a restaurant, group III, including outdoor seating.
2. The applicant is limited to 20 seats on the outside deck and 21 seats inside the restaurant, group III, as shown on the applicant's site plan attached as EXHIBIT B.
3. The location of the outdoor seating area is limited a 453± square foot deck as designated on the applicant's site plan attached as EXHIBIT B.
4. The hours of operation for outdoor seating will be restricted to the hours of 11:00 am to 10:00pm daily.
5. There will be no advertisement visible from Estero Boulevard or Ohio Avenue indicating the service of alcoholic beverages.
6. Live outdoor music, entertainment and piped music is prohibited.
7. Lighting on the deck will be shuttered and shielded from the surrounding properties.
8. Parking must be in compliance with the Town of Fort Myers Beach requirements prior to the issuance of the beverage license.

#### Findings & Conclusions

Staff believes that with the conditions recommended, the requested special permit meets the criteria for approval set forth in the Land Development Code (LDC), Section 34-145 as it applies to outdoor seating with consumption on premises. Based upon an analysis of the application and the standards for approval of a special permit, staff makes the following findings and conclusions:

1. There exist changed or changing conditions that make approval of the request appropriate.
2. The requested special permit, as conditioned:

- a) is consistent with the goals, objectives, policies and intent of the Town of Fort Myers Beach Plan;
- b) is consistent with densities, intensities and general uses set forth in the Town of Fort Myers Beach Plan;
- c) will be compatible with existing or planned uses; and
- d) will not cause damage, hazard, nuisance or other detriment to persons or property.

**B. Rationale:**

**Introduction/Synopsis**

The applicant has requested a special permit to allow outdoor seating in conjunction with consumption on premises for a restaurant, group III at 1821 Estero Boulevard. The restaurant is commonly referred to as Saxe on the Beach and is located within Pelican Plaza.

The Land Development Code Section 34-1264(a)(2) requires a special permit for any establishment providing outdoor seating for its patrons consuming alcoholic beverages, where the outdoor seating area is within 500 feet of a religious facility, school (noncommercial), day care center (child), park or dwelling unit under separate ownership. Since there are residences within 500 feet of the subject property, a special permit approval is required for the outdoor seating area.

**Project Description**

The subject property is located on the northeast corner of Estero Boulevard and Ohio Avenue and is zoned commercial (C-1). A restaurant is permitted in the C-1 zoning district but outdoor seating, in this instance, is only permitted by special permit. The subject property has 141± feet of frontage on Estero Boulevard and 100± feet of frontage on Ohio Avenue and has a total lot area of 13,533± square feet.

The Lee County Property Appraisers records indicate that the original commercial building (Pelican Plaza) was built in 1950. The building recently experienced fire damage and a portion of the building was destroyed. The applicant has received the necessary building permits and that portion of the building destroyed by fire is now being reconstructed. The portion under construction has a total square footage of 3,507± square feet, which includes a 1,390± square foot restaurant (Saxe on the Beach) with a 453± square foot

outdoor seating area on the second floor and on the first floor 1,664± square feet dedicated to retail commercial uses.

There were six commercial establishments within the building prior to a fire which destroyed a portion of the building. The portion of the building that was destroyed housed two retail shops and Saxe on the Beach, a small takeout restaurant. As a result of the reconstruction the applicant moved the restaurant (Saxe on the Beach) to the second floor. The restaurant was expanded and an area for outdoor seating was included in the restaurant expansion. The area being reconstructed, on the first floor, allows for two retail commercial uses.

The existing restaurant, Saxe on the Beach, does not have a beverage license for the service of beer and wine. The applicant is requesting a 2-COP beverage license (Beer and wine) to serve alcoholic beverages in conjunction with meals, which will include consumption on premises for outdoor seating. The proposed hours of operation for the restaurant, including the outdoor seating area are from 7:00 am to 12:00 midnight daily.

### **Standards**

Standards for the requested special permit for outdoor seating are location/separation and parking.

#### **Location and separation**

The location of the outdoor seating is in an area primarily engaged in activities that serve tourism. There are no religious facilities, schools, day care centers, or parks within 500 feet of the outdoor seating area. There are residential dwelling units immediately to the north of the subject property along Ohio Ave and northeasterly adjacent to the walkway abutting the east property line of the subject property. The nearest home is approximately 100 feet north of the outdoor seating area. The outdoor seating area is on the second floor of the building and faces Estero Boulevard and is buffered from the residential area to the north by the indoor portion of the restaurant. Also, immediately to the west, across Ohio Avenue, is a restaurant (Pappa Mondo) with outdoor seating. The outdoor seating area is at grade and abuts Ohio Avenue and Estero Boulevard.

#### **Parking**

The applicant has provided data that the remodeled Pelican Plaza has a total floor area of 6,377± square feet (See Attachment B). The total floor area is comprised of: 1,664± square feet of retail, 1,390± square feet of restaurant space (Saxe on the Beach), and 3,323± square feet dedicated

to the existing commercial retail uses. The applicant has indicated that a total of 34 parking spaces are required for the project, however, only 24 spaces are available on site.

The applicant has agreed to voluntarily submit the subject property to the development regulations as set out in the Fort Myers Beach Core Area Overlay Zoning Master Plan pursuant to Fort Myers Beach Ordinance No. 96-20 (See Attachments C and D). Ordinance 96-20, Section 34-1145(e), off street parking, allows the number of off-street parking spaces to be reduced by one-third in the Fort Myers Beach Core Area Overlay Zone. Therefore, the applicant has demonstrated that, with the one-third reduction in off-street parking (24 spaces), they are able to provide 24 off street parking spaces as shown on Exhibit C.

However, the applicant has calculated the parking for the restaurant only and did not include the outdoor seating area. Section 34-2020(2).2.i. has been amended to read:

*"The minimum requirement is 14 spaces per 1,000 square feet of total floor area, plus 14 spaces per 1,000 square feet of all area used for outdoor seating."*

Therefore, the outdoor seating area occupies 453± square feet, which would require an additional seven (7) off-street parking spaces. Therefore the subject property does not allow for sufficient on site parking. However, the applicant has entered into an agreement with the Town of Fort Myers Beach (See Attachment D), which requires the property owner to partake in a comprehensive parking solution for properties in the Overlay. This agreement will allow the applicant to open his business and account for his insufficient parking requirement off site.

### **Surrounding Zoning & Neighborhood Compatibility**

Property to the north of the subject property is zoned RS-1 and developed with single family residences. To the south is a 25 foot walkway then a commercial planned development (CPD). To the south, across Estero Boulevard, is the Estero Island Beach Club, zoned C-1, then the Gulf of Mexico. To the west, across Ohio Avenue, is a restaurant (aka Pappa Mondo) with outdoor seating zoned C-1.

Several establishments located within the vicinity of the subject property had received County or the Town of Fort Myers Beach approval in previous years for outdoor seating. The most recent is a restaurant immediately across Ohio Avenue (aka Pappa Mondo - See Attachment E) for consumption on premises for outdoor seating (Case #96-07-178.04S). The Estero Island Beach Club

across Estero Boulevard was approved by Case #95-10-232.04S for consumption on premises with outdoor seating for a tiki bar. Consumption on premises was approved for outdoor seating for the Tiki Klub at 1840 Estero Boulevard (Case #95-10-173.02S). Marozzas restaurant (closed) located at 1375 Estero Boulevard received approval for consumption on premises for outdoor seating (Case #95-03-258.02S) and The Beached Whale received approval for outdoor seating at 1249 Estero Boulevard (Case #93-12-23-SP-1).

The proposed area for outdoor seating faces Estero Boulevard and away from the residential dwelling units to the north. Also, the main body of the restaurant separates the outdoor seating area from the residential dwelling units. Staff finds that the outdoor seating area, as conditioned will have minimal impact on the adjacent residential dwelling units.

### **Comprehensive Plan**

The subject property is located in the Pedestrian Commercial land use category of the Town of Fort Myers Beach future and use map. The future land use map incorporates the Community Redevelopment Association (CRA) plan in the Pedestrian Commercial category. A restaurant with outdoor seating is consistent with the uses allowed in the Pedestrian Commercial area.

The subject property is located within the core area of the Town of Fort Myers Beach Plan. The core area is divided into four districts and the subject property is located within the Estero/beachfront Residential District. The Core area vision states "The Downtown Core Area boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'old Estero Island' character to the buildings". The proposed outdoor seating is consistent with this vision. The Estero/beachfront Residential District vision states " Estero Boulevard has become the premier public space on the island, with a strong sense of place, shaped as a memorable 'Avenue of Palms' linking the revitalized downtown to the civic center, the new heart of the island". Staff finds the proposed restaurant with outdoor seating is consistent with this vision statement. Also, the proposed outdoor seating is consistent with Policy 4-B-6 of the Town of Fort Myers Beach Plan.

The Subject property is in the Fort Myers Beach Overlay Zoning Master Plan for the Core Area. Goals 1 and 2, of the Fort Myers Beach Overlay Zoning Master Plan encourages improved pedestrian, transit and vehicular access, parking and the modification of unnecessary regulatory constraints on appropriate development and rehabilitation. Goal 3 encourages diversifying and strengthening the mix of businesses and attractions serving residents and visitors. The applicant has agreed to voluntarily submit the subject property to the development regulations as set out in the Fort Myers Beach Core Area Overlay Zoning Master Plan pursuant to Fort Myers Beach Ordinance No. 96-

20. Staff finds that the proposed outdoor seating is consistent with the Fort Myers Beach Core Area Overlay.

### **Conclusion**

Staff's concern is with the noise and nuisance that may be generated for the outdoor seating area associated with the restaurant. The restaurant is on a corner lot that fronts on Ohio Avenue and Estero Boulevard, with the restaurant facing Estero Boulevard. The restaurant has retail shops below it and to the east. To the west is an existing restaurant with out door seating. To the south across Estero Boulevard is the Estero Island Beach Club. To the north and adjacent to the subject property are residential single family dwelling units. The restaurant is oriented towards Estero Boulevard with the outdoor seating overlooking Estero Boulevard. This orientation of the restaurant separates it from the residential dwelling units and conditions have been placed on the special permit approval to limit the impacts on the adjacent residential dwelling units. Therefore, based on the findings and conclusions, staff recommends **APPROVAL** of the special permit as conditioned.

### **III. SUBJECT PROPERTY**

- A. **STRAP:** The applicant indicates the STRAP number is: 19-46-24-W4-0090B.0080.
- B. **LEGAL DESCRIPTION:** Lot 6 & 8, Block B, SUBDIVISION Gulf Bay View, as recorded in Plat Book 8, Page 69, of the Public Records of Lee County, Florida, lying in Section 19, Township 46 South, Range 24 East, Lee County, FL.

### **IV. ATTACHMENTS**

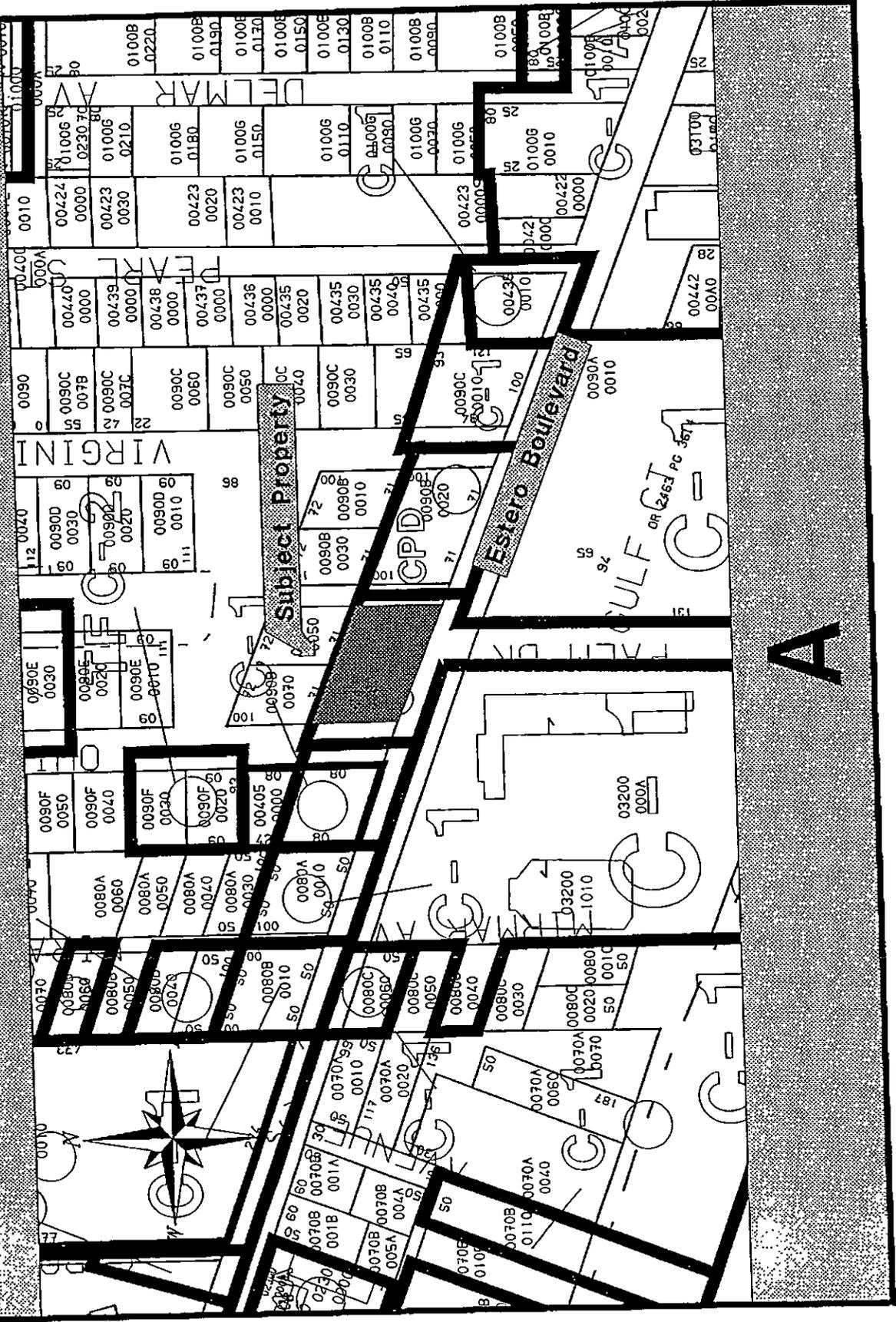
- A. Map of surrounding zoning
- B. Applicant's Parking calculations
- C. Notice of Election to Submit to Development regulation
- D. Agreement with the Town of Fort Myers Beach
- E. Town of Fort Myers Beach Resolution Number 96-27

### **V. EXHIBITS**

- A. Legal Description - see legal description above
- B. Applicant's sit plan - restaurant layout
- C. Parking layout

cc: Applicant  
Town of Fort Myers Beach LPA  
Zoning File

# ZONING MAP



A

RETAIL SPACE

NEW - 1664 S/F -  
EXIST -

1 FOR 3000 - 6 SPACES -

FOOD SERVICE -  
1390 S/F -

14 PER 1000 17 SPACES -

23 SPACES -

**RECEIVED**  
FEB 01 2000

PERMIT COUNTER

~~24.8~~  
~~24.8~~ x 52.6 =

1304.48

10.2 x 7.4 =

75.48

33.5 x 42 =

1407.00

11.5 x 18.2 =

209.30

25 x 7

175.00

7 x 11 = 77

77.00

5 x 15 =

75.00

3323 S/F = 11 SPACES

3323

1664

4987 S/F

34 SPACES

LESS 1/3 =

ATTACHMENT B

16.62

19.46

36.08 TOTAL - 1/3 LESS = 12 = 24 SPACES