

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 11- 15
FMBSEZ2010-0005 (Surf Club)

WHEREAS, applicant Cermak's Surf Club, LLC., by and through Bruce Cermak, owner (collectively "applicant") has requested a special exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages, in a restaurant providing an outdoor seating area within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, the subject property is located at 1167 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24- W4-0150E.001A and the legal description of the subject property is Lot 1, Block E, CRESCENT PARK ADDITION, recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida,

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on January 11, 2011; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on September 26, 2011, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2011-001, the recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2011-001 and the standards for granting special exceptions, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for a special exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages in a restaurant providing an outdoor seating area within 500 feet of a dwelling unit under separate ownership, with such approval subject to the following conditions:

CONDITIONS OF APPROVAL:

1. *The area of the subject property used for outdoor consumption on premises must be confined entirely to the proposed deck shown on the site plan attached hereto and incorporated herein by reference as Exhibit B. This area must be enclosed by a 42 inch railing, except for access points, further delineating the outdoor consumption area from other areas of the subject property.*
2. *Sales, service, and consumption of alcoholic beverages must not begin earlier than 9:00 AM and must end no later than 2:00 AM each day.*
3. *Conditions in prior approvals, including the applicant's May 29, 2009 COP (FMB COP2009-0001) will remain in effect except where such conditions have been modified by this action.*
4. *Music and other audible entertainment are prohibited before 11:00 AM and after 9:00 PM of each day in outdoor seating areas, and must comply at all times with applicable noise ordinances.*
5. *A landscaping plan is to be provided at the time of development order or permit.*

FINDINGS AND CONCLUSIONS:

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

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

The Comprehensive Plan notes in the Consensus on Commercial Uses: "The present concentration of commercial uses in the Times Square area is good for Fort Myers Beach. Despite severe congestion during peak season and a general seediness that had been developing, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today's floodplain regulations. The recent CRA improvements have sparked a renewed interest in Times Square among most islanders and has spurred a healthy movement to upgrade existing buildings." Also, as contemplated in the Comprehensive Plan, the Times Square area (Downtown Core) has continued to emerge as a vibrant urban core for the Town. Therefore, the area can support a more intensive mix of uses which is consistent with the applicant's request.

2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

The applicant's request for outdoor consumption on premises is fitting with the vision for the area. The subject property is located in the Times Square area (Downtown Core). The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment

area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings."

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

3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.

The very nature of this application indicates that the requested use of outdoor consumption on premises is not a use allowable by right on the subject property. It is however, a use permitted by special exception. The applicant's request is appropriate at this location due to the subject property's location in the Times Square area (Downtown Core) and is consistent with the goals, objectives, policies and intent of the Comprehensive Plan; which describes a vibrant tourist commercial district.

4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:

The proposed outdoor consumption application will have virtually no negative effects on environmentally critical areas and natural resources. The subject property is within an existing commercial district and the proposed deck is to be located on an area of the site that was previously disturbed.

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

The subject property and the area immediately surrounding it are within the Pedestrian Commercial future land use category. The Comprehensive Plan's vision for the Times Square area (Downtown Core) encourages commercial uses be maintained and/or increased, including outdoor cafes. Staff feels the applicant's request is compatible with the area and its vision.

6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

The outdoor consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including but not limited to Sections 34-678(7)(e)(1), 34-678(7)(e)(4), and 34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

Upon a motion made by Vice Mayor Raymond and seconded by Council Member Mandel, this Resolution was

DULY PASSED AND ADOPTED ON THIS 26TH DAY OF September, 2011.

Larry Kiker, Mayor aye
Alan Mandel aye
Joe Kosinski aye

Bob Raymond, Vice Mayor aye
Jo List aye

By: 
Larry Kiker, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

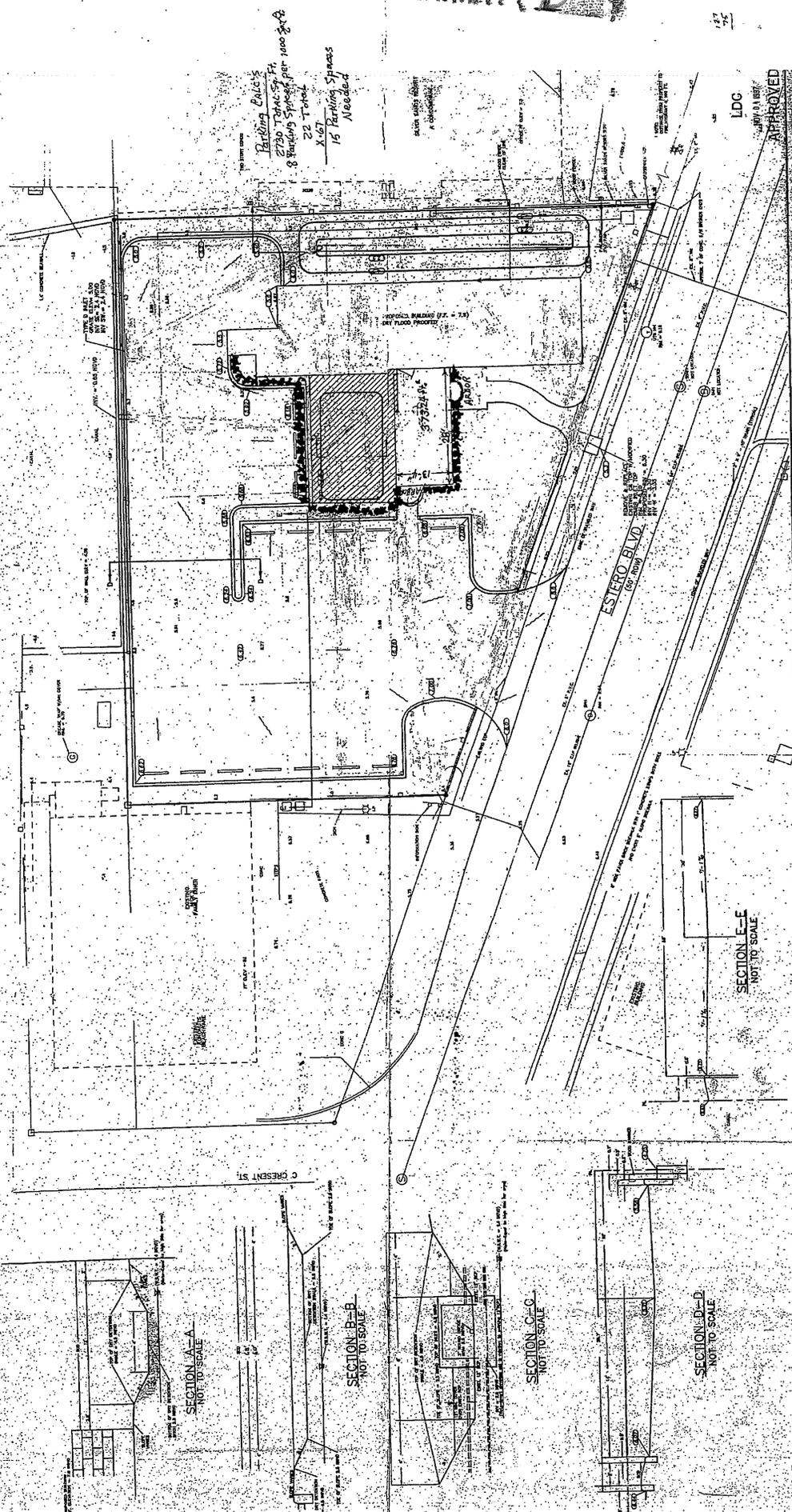
Approved as to form and legal sufficiency:

By: 
FOWLER WHITE BOGGS
Town Attorney

MEMO Exhibit 1

NOT RECORDED
APR - 4 2011
RECEIVED BY

GRAPHIC SCALE



Parking Cuts
2700 Trucks
8 Trucking Spots per 1000 sq ft
22 Total
x .67
15 Parking Spaces
Needed

127

LDC

APPROVED

1167 ESTERO BLVD.
SP4, 14657, 238
FAY, GRAD, UTTI, & DRINGER

NORTHLAKE FOODS
3414 PRACHTREE RD, SUITE 400
ATLANTA, GA 30326
404-247-6600

CONSUL-TECH ENGINEERING, INC.
Consulting Engineers Land Planners Land Surveyors
2443 Old 41 Road
Briscoe Springs, Florida 32135
Phone: 407-329-1111
E-Mail: bontibus@contee.com



DATE: 11/16/11
SCALE: AS SHOWN
PROJECT: 1167 ESTERO BLVD.
SHEET: 1 OF 1

