

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 06-06**

WHEREAS, Emmanuel Neskes & Stavros Maillakakis (Applicant), have petitioned for a variance (VAR2005-00048) from Section 34-674(b)(1)a.1. of the Town of Fort Myers Beach Land Development Code (LDC) to reduce the minimum required rear lot line setback in the Downtown zoning district from ten (10) feet to zero (0) feet; and

WHEREAS, the subject property is located at 1001 Estero Boulevard, Fort Myers Beach, and consists of 2,658+/- square feet or .06+/- acres located in Section 24, Township 46 South, Range 23 East, Lee County, Florida; and

WHEREAS, the subject property currently houses Plaka Restaurant, a one-story 2,384 +/- square foot building, including enclosed space and a covered patio, with a seating capacity of 100 patrons; and

WHEREAS, the applicant has indicated the subject property's current STRAP number is 24-46-23-W3-00008.0000 and the subject property's legal description is attached hereto **Exhibit "A"** and incorporated herein by reference, and

WHEREAS, a public hearing on the requested variance for the subject property was legally advertised and held before the Local Planning Agency (LPA) on May 9, 2006; and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, and the testimony of all interested persons, and recommended approval of the requested variance for the subject property, subject to five (5) conditions; and

WHEREAS, a public hearing on the requested variance for the subject property was legally advertised and held before Town Council on August 14, 2006; and,

WHEREAS, the Town Council gave full and complete consideration to the recommendations of staff, the documents in the file, the testimony of all interested persons, and the LPA's recommendation of approval (subject to the five conditions listed in the LPA Resolution) of the requested variance for the subject property .

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

The Town Council APPROVES Applicant's request for a variance, subject to the six (6) conditions listed below.

FINDINGS AND CONCLUSIONS

Based upon the presentations of Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for granting variances, the Town Council makes the following findings and reaches the following conclusions:

1. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question; and
2. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question; and
3. The variance, if granted with the six (6) conditions listed below, is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property; and

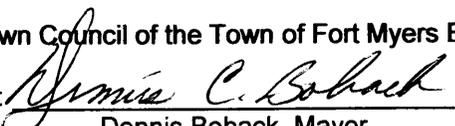
4. The variance, if granted with the six (6) conditions listed below, will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
5. The conditions or circumstance of the subject property for which the variance is sought is not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.
6. The Town Council adopts the following six (6) conditions to the granting of this variance:
 - (i) The variance is limited to the northern rear lot line setback of the subject property.
 - (ii) The building must meet all other applicable development standards for the Downtown Zoning District, as well as building code regulations for non-residential construction, including, but not limited to, dry-floodproofing up to the base flood elevation for sidewalk-level commercial space, setbacks, build-to-lines, height, commercial design standards, outdoor dining, and other applicable standards.
 - (iii) The building must be fully sprinkled and monitored by an alarm company, as recommended by the Fort Myers Beach Fire Control District ("Fire District");
 - (iv) A four (4) -hour fire wall must be constructed on the northern and eastern walls, directly adjacent to the buildings on Lot 2 and the remainder of Lot 3, Block 8, Business Center Subdivision, Plat Book 9, Page 9, Public Records of Lee County, currently housing Kilwins and Pete's Time Out restaurants, respectively, as recommended by the Fire District;
 - (v) All utility disconnects, as required by commercial building codes, must be located on the Old San Carlos side of the building to provide access to the Fire District for emergency purposes, as recommended by the Fire District;
 - (vi) Applicant will fully comply with all requirements regarding sea turtle conservation as set forth in Chapter 14, Article II, Sea Turtle Conservation, of the Town of Fort Myers Beach Land Development Code.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Don Massucco and seconded by Council Member Garr Reynolds, and upon being put to a vote, the result was as follows:

Dennis Boback, Mayor	aye
Don Massucco, Vice Mayor	aye
Charles Meador, Jr.	aye
Garr Reynolds	aye
William Shenko, Jr.	absent

DULY PASSED AND ADOPTED THIS 14th day of August, 2006.

Town Council of the Town of Fort Myers Beach

By: 
Dennis Boback, Mayor

ATTEST:

By: 
Michelle Mayher, Town Clerk

APPROVED AS TO LEGAL SUFFICIENCY:

By: 
Anne Dalton, Esquire, Town Attorney

EXHIBIT A

Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073



LEGAL DESCRIPTION

Plaka Restaurant, Fort Myers Beach

A parcel of land in Section 24, Township 46 South, Range 23 East, Fort Myers Beach, Lee County, Florida being more particularly described as follows:

Commence at the southwest corner of Block E of Crescent Park Addition according to the plat thereof recorded in plat book 4 at page 46 of the public records of Lee County, Florida, thence N.70°35'51"W. along the northerly right of way line of Estero Boulevard for 744.49 feet to the southwest corner of Lot 4, Block 8 of Business Center according to the plat thereof recorded in plat book 9 at page 9 of said public records as a point of reference; thence continue N.70°35'51"W. along said northerly right of way line for 40.00 feet to the point of beginning of the herein described parcel of land; thence continue N.70°35'51"W. along said northerly right of way line for 54.25 feet to an intersection with the easterly right of way line of Old San Carlos Boulevard; thence N.26°01'10"E. along said easterly right of way line for 50.02' to an intersection with the southerly line of Lot 2 of the aforementioned Block 8; thence S.70°35'51"E. along said southerly line for 53.49 feet; thence S.25°08'56"W. for 49.94 feet to the point of beginning.

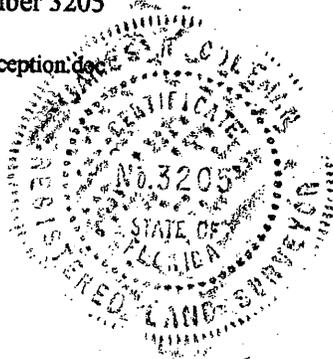
Bean, Whitaker, Lutz & Kareh, Inc.
Certificate Of Authorization Number LB0004919

Applicant's Legal Checked
by lsm 3/31/2006

Date: 01/31/06

James R. Coleman (For The Firm)
Registered Land Surveyor
Florida Certificate Number 3205

BWLK Desc for Special Exception.doc
January 31, 2006



RECEIVED
MAR 21 2006

PERMIT COUNTER

VAR 2005-00048

PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:
TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE