

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2007-12

WHEREAS, Applicant Thomas F. Kolar ("Applicant") has requested a Special Exception for the Yucatan Beach Stand to be located at 250 Old San Carlos Boulevard, Fort Myers Beach, Florida ("subject property") to permit a 4-COP liquor license in conjunction with a restaurant use which provides outdoor seating and is located within 500 feet of a park and dwelling units under separate ownership; and

WHEREAS, Applicant has indicated the subject property's current STRAP number is 24-46-23-W3-00204.0010. The legal description of the subject property is attached hereto as Exhibit "A" and incorporated herein by reference, and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on June 19, 2007; and,

WHEREAS, at the hearing, the LPA gave full and complete consideration to the recommendations of staff, related documents, the request of Applicant and the testimony of Applicant, staff, and other interested persons as required by the Town of Fort Myers Beach Land Development Code Section 34-88.

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

Based upon the presentations by Applicant, staff, and other interested persons at the hearing, review of the application, and the standards for granting special exceptions, the LPA recommends the following conditions for approval, findings, and conclusions, for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** Applicant's request for a special exception to permit a 4-COP liquor license in conjunction with the subject property which provides outdoor seating and is located within 500 feet of a park and dwelling units, with such approval subject to the following conditions.

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. Outdoor music or similar entertainment is prohibited. Indoor music and/or similar entertainment is restricted to the following hours: 11:00 AM to 11:00 PM from Monday through Thursday; 11:00 AM through 10 PM on Sunday; and 11 AM through Midnight on Friday and Saturday. Live music must be limited to non-amplified music until a noise buffer is installed that, in the determination of the Town Community Development Director, adequately protects the residential area from noise impacts.

2. The Special Exception is limited to on-premises consumption of alcoholic beverages in a 4500 square-foot area encompassing the indoor areas, roofed patio/deck area, and walk-in coolers as shown on the site plan, which is attached to this Resolution as Exhibit "B" and hereby incorporated by reference.

3. The hours of operation are limited to Monday through Thursday between the hours of 11:00 AM and 12:00 Midnight; between 11:00 AM and 1 AM on Friday and Saturday; and between 11:00 AM and 10 PM on Sunday.

4. The Special Exception is limited to a 4COP license for on-premises consumption of alcoholic beverages. The sale of alcoholic beverages on the subject property must comply with the provisions of LDC Section 34-1264(k) concerning sale of alcoholic beverages in restaurants.

5. A full menu of food, encompassing full-course meals, must be available and offered to indoor and outdoor seating during hours of operation for consumption on premises. The sale of alcoholic beverages must be incidental to the sale of food.

6. Gross revenues from sale of food and non-alcoholic beverages must not fall below 51% of total sales over any 12-month period, or over the period during which the business has been in operation if the business has not been in operation for 12 months or more. If sale of alcoholic beverages exceeds 49% of total sales, this approval will become null and void. The Town Manager or designee may audit the records of the business to verify compliance.

7. The business must be in full compliance at all times with applicable provisions of state beverage law for the series of beverage license it holds.

8. The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles found in LDC Chapter 14, Article II.

9. Prior to the issuance of a development order for the proposed project, the owner must execute an easement agreement with the Town of Fort Myers Beach for use of the public right-of-way in accordance with LDC Section 34-995(e)(6)a.

10. Condition #9 above does not grant the owner or successor in interest undeniable right to development order approval.

### **RECOMMENDED FINDINGS AND CONCLUSIONS**

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

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

Comprehensive Plan (Comp Plan) policy 3-D-1 envisions "revitalizing downtown as a lively, inviting, comfortable, and safe public environment." In keeping with this policy, improvements including spacious sidewalks and a pedestrian plaza at the north end of Old San Carlos Boulevard, have contributed to the pedestrian-friendliness of this area. The LPA finds that these changes make approval of the requested Special Exception appropriate, as conditioned.

2. The requested special exception, as conditioned:

- a) **Is** consistent with the goals, objectives, policies and intent of The Town of Fort Myers Beach Comprehensive Plan; and

The subject property is in the Pedestrian Commercial FLUM category, on Old San Carlos Boulevard. Comp Plan Policy 4-B-6, regarding the Pedestrian Commercial district, states that commercial activities must contribute to the pedestrian-oriented public realm. The proposed restaurant/bar use with its partially enclosed, roofed dining area fronting on the sidewalk, will invite pedestrian patrons and contribute to the pedestrian-oriented character of Old San Carlos Boulevard. The LPA finds that the request is consistent with the goals, objectives, policies, and intent of the Comp Plan.

- b) **Will** protect, conserve, or preserve environmentally critical areas and natural resources; and

The immediate vicinity of the subject property is developed and is not designated by the Comp Plan as environmentally critical. No net change in impervious area is requested, and no environmental concerns appear to be directly implicated in this request for special exception. Through the development order and building permit process, the Applicant will be required to address the turtle protection lighting standards in condition #9 above.

- c) **Does** meet or exceed all performance and locational standards set forth for the proposed use in Chapter 34 of the LDC; and

A restaurant is a use permitted by right in the Downtown zoning district. The applicant's site plan proposes 30 parking spaces. For 4500 square feet of total area of restaurant use, LDC Section 34-2020 requires 36 parking spaces. For 700 square feet of area within a restaurant used for a bar or cocktail lounge, LDC Section 34-2020 requires an additional 4 spaces, for a total of 40 required spaces for the requested use. In the Downtown zoning district, for properties fronting on Old San Carlos Boulevard, LDC Section 34-676(a)(1) reduces the required parking by 50%, thus requiring only 20 parking spaces for the requested restaurant/bar with COP. The parking proposed on the site plan meets this requirement. A permanent immovable structure encroaching upon the right-of-way of Old San Carlos Boulevard is permitted if granted "explicit permission" by the Town in accordance with LDC Section 34-995(e)(6)a. Awnings, canopies, or marquees are required by LDC Section 34-674(3) to extend over the sidewalk on Old San Carlos Boulevard. If granted the necessary "explicit permission" required in LDC Section 34-995(e)(6)a., as restated by condition #9 above, as well as any required development order(s) and building permit(s), the proposed colonnade shading the sidewalk will fulfill this requirement. The requested use requires a special exception because the outdoor seating area is within 500 feet of a park and dwelling units under separate ownership, but otherwise the LPA finds that all locational standards for alcoholic beverage service will be met according to the applicant's site plan.

- d) **Will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property and

The existing surrounding uses include parking lots, retail stores, lodging establishments, and restaurants, many of which hold 2COP or 4COP beverage licenses. Residential uses are separated from the subject property by hotels, retail stores, parking lots, and other restaurants. The LPA finds that the requested use, as conditioned, will be compatible with existing or planned uses, and will not cause damage, hazard, nuisance, or other detriment to persons or property.

- e) **Will** be in compliance with all general zoning provisions and supplemental regulations pertaining to the use as set forth in the LDC:

With the recommended conditions, the LPA finds that the requested use will/will not meet the regulations of LDC chapter 34, Article IV, Division 5 regarding on-premises consumption of alcoholic beverages, will comply with the general zoning provisions applicable to the Downtown zoning district, and will comply with the other applicable general zoning provisions and supplemental regulations set forth in LDC chapter 34.

The LPA recommends the Town Council find that Applicant **has** demonstrated that the requested Special Exception, as conditioned, complies with the standards of the LDC Section 34-88 and with:

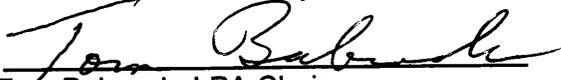
- a) The Town of Fort Myers Beach Comprehensive Plan; and
- b) The requirements of the LDC, including but not limited to LDC Section 34-88; and
- c) Any other applicable town ordinances or codes.

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

Tom Babcock	<u>aye</u>	Alan Mandel	<u>aye</u>
Evie Barnes	<u>absent</u>	Bob Raymond	<u>aye</u>
Rochelle Kay	<u>aye</u>	Dennis Weimer	<u>aye</u>
Bob Simon	<u>aye</u>		

DULY PASSED AND ADOPTED THIS 19<sup>th</sup> day of June, 2007.

LPA of the Town of Fort Myers Beach

By:   
Tom Babcock, LPA Chair

Approved as to legal sufficiency:

By:   
Anne Dalton, Esquire  
LPA Attorney

ATTEST:

By:   
Michelle D. Mayher, Town Clerk

# EXHIBIT "A"

Town of Fort Myers Beach

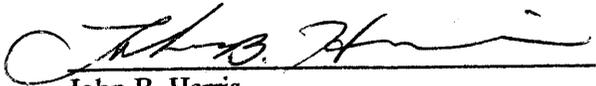
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DESCRIPTION: (Per Harris - Jorgensen, Inc.)

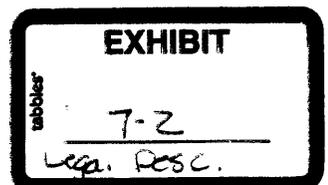
A tract or parcel of land lying in Blocks 4 and 5, and portions of a vacated alley lying between Blocks 4 and 5, and a portion of the South Half of vacated Fourth Street, all as shown on the Plat of Business Center, Section 24, Township 46 South, Range 23 East, Estero Island and recorded in Plat Book 9 at Page 9 of the Public Records of Lee County, Florida which tract or parcel is described as follows:

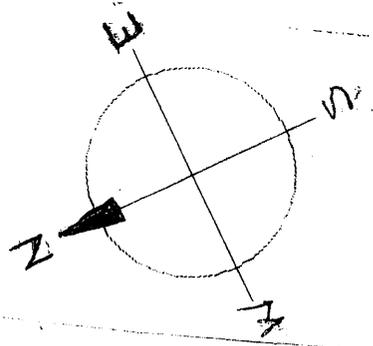
Beginning at the intersection of the centerline of the aforesaid Fourth Street and the Southeasterly right-of-way line of San Carlos Boulevard (66 feet wide); thence run S.64°00'09"E. along the centerline of said Fourth Street for 155.10 feet to a point of the Northwesterly line of SR 865 (85 feet wide); thence run S.25°59'51"W. along said Northwesterly line for 235.66 feet to a point on the centerline of a vacated alley 20 feet wide; thence run N.22°23'59"W. along said centerline for 87.06 feet; thence run N.25°59'51"E. along said centerline for 72.86 feet; thence run N.64°00'09"W. along a Southeasterly prolongation of the Southwesterly line of Lot 2 of said Block 4 and the Southwesterly line of said Lot 2 for 90 feet to the Southeasterly right-of-way line of said San Carlos Boulevard; thence run N.25°59'51"E. along said Southeasterly right-of-way line for 105 feet to the point of beginning. Containing 22,910 square feet, more or less.

Bearings hereinabove mentioned are derived from the Florida Department of Transportation right-of-way maps for SR 865.

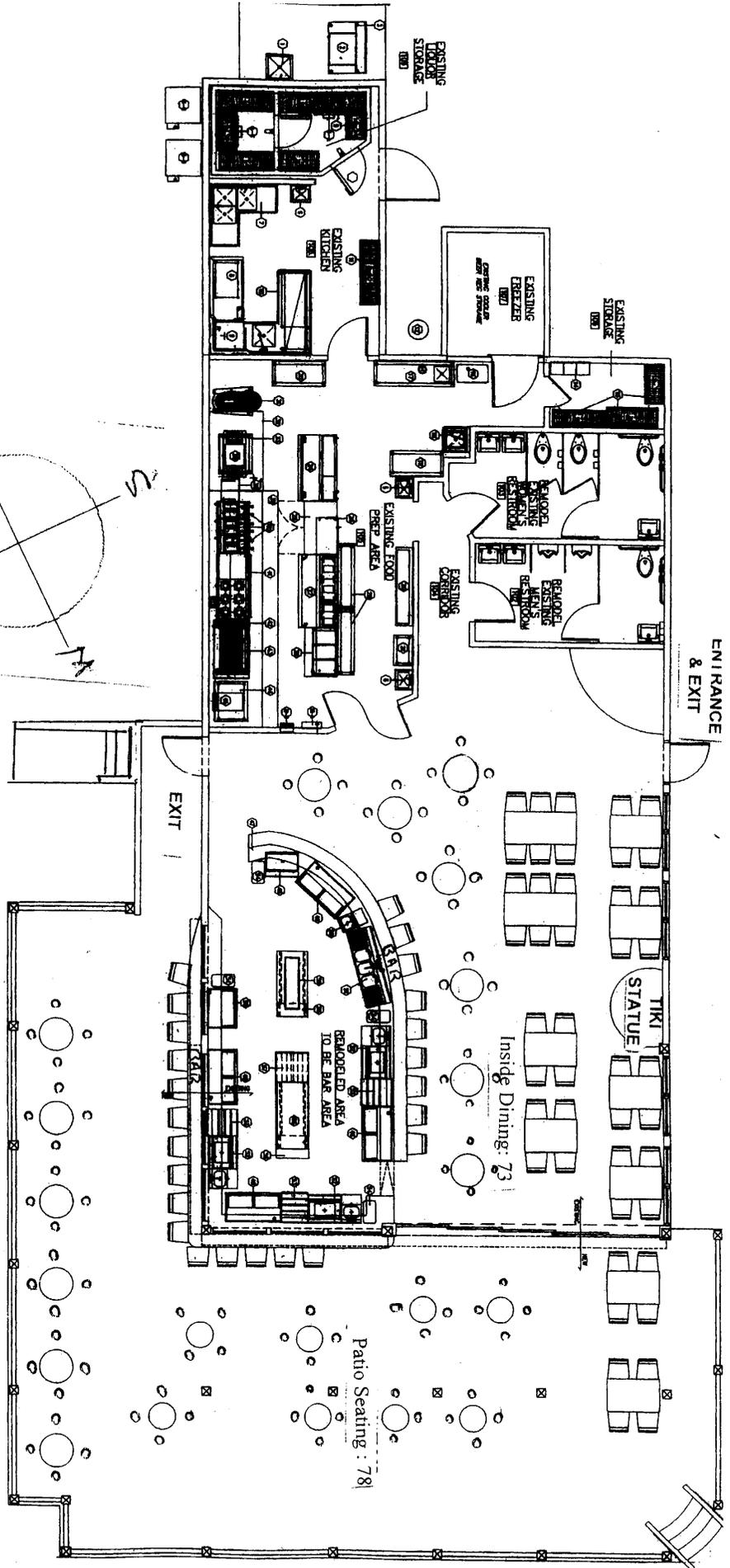


John B. Harris  
P.S.M. #4631  
January 5, 2007





NOT TO SCALE - SEE SITE PLAN



**EXHIBIT ( B )**

Town of Fort Myers Beach

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