

RESOLUTION OF THE TOWN COUNCIL
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 08-34

WHEREAS applicant Joerg Wiebe, registered agent for Cabasca's Restaurant Inc. (the subject establishment), with authorization from Seafarer's 1997 Inc. (owner of the subject property), requested a special exception in a CPD zoning district to allow consumption on premises of beer, wine, and intoxicating liquors (4COP), which use would constitute a bar/cocktail lounge; and

WHEREAS the subject property is located at 1113 Estero Boulevard, Fort Myers Beach, Florida, and formerly housed a restaurant operated by the subject establishment under the fictitious name "Cabrasca's"; and

WHEREAS the applicant has indicated that the STRAP number assigned to the subject property by the Lee County Property Appraiser is 24-46-23-W3-00206.0010 and the legal description of the subject property is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, applicant previously applied for a 4COP (quota) alcoholic beverage license for a bar/cocktail lounge use for the subject property, which previous application was denied by Town Council for the Town of Fort Myers Beach in 2002 for the reasons set forth in Town Resolution 02-07 (**Exhibit B**, which is attached hereto and incorporated herein by reference); and

WHEREAS a public hearing was legally advertised and held before the Local Planning Agency (LPA) on July 15, 2008, at which time the LPA passed Resolution 2008-34; and

WHEREAS, a public hearing on this matter was legally advertised before the Town Council on August 18, 2008, but held on August 27, 2008, due to emergency conditions associated with Tropical Storm Fay, at which time the Town Council gave full and complete consideration to the LPA Resolution 2008-34, staff recommendations, the documents in the file, request of the applicant, and 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 applicant, staff, and other interested persons at the hearing, and review of the application and standards for granting the requested relief, the Town Council reaches the following findings of fact, conditions for approval, and conclusions:

The Town Council **APPROVES** the applicant's request for a special exception to permit consumption on premises of beer, wine, and intoxicating liquors (4COP), with such approval subject to the following conditions.

CONDITIONS OF APPROVAL:

1. Licensed areas of the subject establishment must be confined entirely to the hatched areas on the site plan (attached hereto as **Exhibit C** and hereby incorporated by reference).

2. **Music and other audible entertainment must be confined within the exterior walls of the subject establishment and must only take place during hours beginning at 11:00 AM and ending at midnight of each day.**
3. **The hours of operation of the subject establishment must not begin earlier than 11:00 AM and must end no later than 2:00 a.m. daily; however, the hours of operation of the patio area must end no later than midnight daily.**
4. **The existing barriers and landscaping located between the wall of the subject establishment and the roadway must be removed prior to this approval being finalized, in accordance with the perpetual easement granted to the Town and recorded in Official Record Book 4033, Page 277, Public Records of Lee County, Florida. Notwithstanding any provision of that easement, the removal of the barriers and landscaping must be at no expense to the Town. Applicant must obtain any required permits for this removal and must pass an inspection by the Town prior to this condition being deemed fulfilled. This removal requirement does not apply to the two existing palm trees.**
5. **The food service facilities must remain open and serve appropriate food items, including cooked, full-course meals, on the menu at all times coincident with the sale of alcoholic beverages. LDC Sections 34-1264(k)(1), 34-1264(k)(3), 34-1264(k)(5), and 34-1264(k)(6) apply to the subject establishment in conjunction with conditions #6 and #7 below.**
6. **The sale of alcoholic beverages may account for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.**
7. **The town manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverage sales are made wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of the owner or operator to allow said inspection shall be a violation of the LDC. Should the audit reveal that this requirement is not being met or should the inspection request be refused, the town manager may initiate enforcement proceedings for a violation of the LDC.**
8. **The subject establishment must be in full compliance at all times with applicable provisions of the Florida Beverage Law for the series of beverage license it holds.**
9. **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.**
10. **Approval of this application is limited to the subject establishment operating on the subject property and does not excuse any other establishment on the subject property from compliance with all terms and conditions of Town**

Council Resolution 02-07 (**Exhibit B**), as amended. Any other departure from the terms and conditions of Town Council Resolution 02-07 will be allowed only upon approval through appropriate processes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

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 reaches 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.” Since the approval of Town Council Resolution 02-07, redevelopment of the subject property has not been actively pursued and the existing buildings have been underutilized. Allowing one of the existing restaurant uses on the subject property to convert to a bar/cocktail lounge without the requirement of service of food does not comply with Policy 3-D-1. However, as conditioned above, the changed or changing conditions would exist to make the approval appropriate.

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

The subject property is in the Pedestrian Commercial FLUM category, on Estero Boulevard. Comp Plan Policy 4-B-6, regarding the Pedestrian Commercial District, states that commercial activities must contribute to the pedestrian-oriented public realm. Policy 3-D-1 refers to the revitalization of the downtown area. The current configuration of the subject property detracts from the pedestrian orientation of the public realm by obstructing the right-of-way, thrusting pedestrians on a narrow sidewalk toward a constrained roadway filled with impatient motorists. More intense and potentially disruptive use of the subject establishment could increase this problem, and would not mitigate it. Furthermore, the easement recorded in OR Book 4033, Page 277 of the Public Records of Lee County, Florida, specifies that the use of the outdoor seating area beneath the canvas awning formerly utilized by the subject establishment was to continue for a maximum of three years after the granting of that easement in March 2003 and this use has therefore expired. The request to expand the consumption-on-premises use to constitute a bar/cocktail lounge would be inconsistent with the goals, objectives, policies, and intent of the Comp Plan. However, as conditioned above, it would be so consistent.

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

A restaurant is a use permitted by right in the Downtown zoning district, and in the subject property’s CPD zoning approved by Resolution 02-07. Consumption on premises of alcoholic beverages was approved in Resolution 02-07 for specific locations. The requested consumption-on-premises use requires a special exception because specific conditions in Town Council Resolution 02-07 require a special exception for intensification of alcoholic beverage service in any of the locations approved therein.

The subject establishment has failed to meet the zoning performance standard requiring alcoholic beverage sales to remain below 49% of total sales within the restaurant included in LDC Section 34-1264(k) and in Resolution 02-07. The establishment's 4COP-SRX license has been revoked for violation of F.S. 561.20(2)(A)4, which requires licensees to maintain at least 51% of their gross sales from the sale of food and non-alcoholic beverages, which is the same standard as the Town's LDC Section 34-1264(k). The sidewalk adjacent to the subject property on Estero Boulevard does not meet the width and separation requirements of LDC Section 10-289. The landscaping timbers and fencing, and most of the canvas awning, are within the right-of-way of Estero Boulevard or within the pedestrian easement recorded in OR Book 4033, Page 277 and the Town has not given permission for this intrusion. From the curb of the existing roadway to the landscaping and barriers along the seating area, the existing sidewalk is approximately 4.5 feet wide. LDC Section 10-289(d) requires a sidewalk width of 10 feet in this location. Given the pivotal importance of the location in pedestrian and motor travel, this existing situation is especially detrimental to public safety. The developer has failed to develop the subject property in accordance with Resolution 02-07, and intensifying existing uses on the subject property would encourage the continuation, and potential exacerbation, of this nonconforming situation. Under these circumstances, the application, without the conditions included above, would not meet or exceed performance and locational standards set forth for the proposed use; however, with the above conditions, the application would so meet or exceed such standards.

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

The immediate vicinity of the subject property was developed several decades ago and is not designated by the Comp Plan as environmentally critical. In addition, no construction is proposed at this time. Condition #9 above clarifies that the use of the subject establishment, if approved, must comply with requirements for the protection of endangered species. Under these circumstances, approval of the request would not measurably detract from the protection, conservation, or preservation of environmentally critical areas and natural resources, and would therefore not be adverse to LDC and Comp Plan provisions for the protection, conservation, and preservation of environmentally critical areas and natural resources.

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

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. A requested bar/nightclub for the subject property was previously denied in Town Council Resolution 02-07. The applicant's license for consumption on premises of alcoholic beverages in the subject establishment has been revoked for a violation of the Florida Beverage Law. Continued use of the outdoor seating area beneath the canvas awning would violate the terms of the easement recorded in OR Book 4033, Page 277 of the Public Records of Lee County, Florida. The proximity of the requested use to a public sidewalk that does not meet the width and separation requirements of LDC Section 10-289, the Beverage Law violation, and the failure to redevelop the subject property in compliance with the current CPD zoning suggest that

the requested use will not be compatible with existing or planned uses and could cause damage, hazard, nuisance, or other detriment to persons or property. However, as conditioned above, the requested special exception will be so compatible and will not cause damage, hazard, nuisance or other detriment to persons or property.

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

The subject establishment's 4COP-SRX license has been revoked for violating standards contained in F.S. 561.20(2)(A)4 that coincide with Town zoning regulations contained in LDC Section 34-1264(k) and in Town Council Resolution 02-07. Upon granting of the requested special exception with the conditions specified above, most of the requirements of LDC Section 34-1264(k) would not apply to the subject establishment and the requested special exception will be in compliance with such provisions and regulations.

7. The applicant **has** demonstrated that the requested special exception, as conditioned, complies with the standards in the Fort Myers Beach Comprehensive Plan, LDC Chapter 34, including LDC Section 34-88, and any other applicable Town ordinances or codes.

The above findings and conclusions are incorporated herein to show that such demonstration has been made.

The foregoing Resolution was adopted upon a motion by Council Member Raymond and seconded by Council Member List. Upon being put to a vote, the result was as follows:

Herb Acken	<u>aye</u>	Tom Babcock	<u>absent</u>
Larry Kiker	<u>aye</u>	Jo List	<u>aye</u>
Bob Raymond	<u>aye</u>		

DULY ADOPTED THIS 26th day of August, 2008.

Town Council of the Town of Fort Myers Beach

BY: 
Larry Kiker, Mayor

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
Town Attorney

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

LEGAL DESCRIPTION

DESCRIPTION: (TRACT "B")

Part of Block 6, Business Center Subdivision as recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida and part of Section 24, Township 46 South, Range 23 East, Lee County, Florida, described as follows:

Commencing at the intersection of the Northeasterly right-of-way line of Estero Boulevard and the Southwest corner of Block "E", Cresent Park Addition as recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida; thence run N.70°37'09"W. along said Northeasterly right-of-way line for 195.75 feet to the point of beginning; thence continue N.70°37'09"W. along said right-of-way line for 93.70 feet; thence run N.19°22'51"E. for 123.05 feet; thence run N.70°37'09"W for 50.02 feet; thence run N.19°22'51" E. for 35.01 feet to the Southeasterly corner of Lot 7, Block 6, of the aforesaid Business Center Subdivision; thence run N.70°37'09"W. for 100.05 feet; thence run N.22°23'59"W. for 80.04 feet to the Northwesterly corner of Lot 6, Block 6, of said Business Center Subdivision, being the Southerly right-of-way line of Fifth Avenue; thence run N.67°36'01"E. along said right-of-way line for 205.16 feet; thence run N.25°59'51"E. along the Southeasterly right-of-way line of said Fifth Avenue for 16.45 feet to a point on a curve; thence run Northeasterly along said right-of-way line for 75.05 feet along the arc of a curve concave Northwesterly, with a radius of 209.00 feet, a delta of 20°34'26", a chord bearing of N.35°32'37"E. and a chord distance of 74.65 feet to a point of reverse curvature; thence continue Northeasterly along said right-of-way line for 108.07 feet along the arc of a curve concave Southeasterly, with a radius of 151.00 feet, a delta of 41°00'25", a chord bearing of N.45°45'34"E. and a chord distance of 105.78 feet; thence run S.64°00'09"E. along the Southerly right of way line of said Fifth avenue for 45.46 feet (said line not radial to the previously described line) to a point on the Westerly right-of-way line of Cresent Street; thence run S.01°20'13"E. along the Westerly right-of-way line of said Cresent Street for 48.08 feet; thence run S.00°09'30"W. along said Westerly right-of-way line for 350.04 feet; thence run S.00°39'36"E. along said right-of-way line for 19.94 feet; thence run N.70°28'31"W. for 80.88 feet; thence run S.19°31'29"W. for 42.50 feet; thence run N.70°37'09"W. for 29.08 feet; thence run S.19°22'51"W. for 94.80 feet to the point of beginning.

Said tract contains 2.330 acres, more or less and is subject to easements, restrictions and reservations of record.

TOGETHER WITH: (TRACT "C")

DESCRIPTION:

Lots 7, 8 & 9, Block 5, Business Center Subdivision as recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida, Said Lot 7 is less right-of-way taken by Florida Department of Transportation for State Road 865.

Said tract contains 9,041.5 square feet, more or less and is subject to easements, restrictions and reservations of record.

Bearings are based on the Northeasterly right-of-way line of Estero Boulevard as being N.70°37'09"W.

TOGETHER WITH: (TRACT "E")

DESCRIPTION:

Lots 1, 2, 3 and 4, Block 6, of that certain subdivision known as Business Center, according to the Plat thereof recorded in Plat Book 9, Pages 9 and 10, Public Records of Lee County, Florida;

Also, a parcel in Government Lot 1, Section 24, Township 46 South, Range 23 East, Estero Island, Lee County, Florida, described as follows:

From the concrete monument (P.R.M.) marking the Southerly corner of Lot 1, Block 6 of the aforesaid Business Center subdivision, run North $20^{\circ}06'00''$ East for 158.00 feet; thence run South $69^{\circ}51'55''$ East for 100.00 feet; thence run South $20^{\circ}07'40''$ West for 35.00 feet; thence run South $69^{\circ}52'50''$ East for 50.00 feet; thence run South $20^{\circ}06'50''$ West for 123.00 feet; thence run North $69^{\circ}53'10''$ West for 150.00 feet to the Point of Beginning.

Less and except that part of the above described land shown as parcel 102 in that Order of Taking recorded in O.R. Book 1164, Page 102, Public Records of Lee County, Florida, and described as follows:

Commence at the Southwest corner of Lot 7, Block 8, of the aforesaid Business Center subdivision, thence run South $70^{\circ}37'09''$ East 185.55 feet to a point of beginning; thence continue South $70^{\circ}37'09''$ East 82.00 feet; thence North $60^{\circ}15'10''$ West 83.36 feet; thence North $42^{\circ}58'04''$ West 28.45 feet; thence South $22^{\circ}23'59''$ East 37.82 feet to the Point of Beginning.

Bearings are from assuming the East line of the aforesaid Business Center subdivision to be North.

TOGETHER WITH: (TRACT "A")

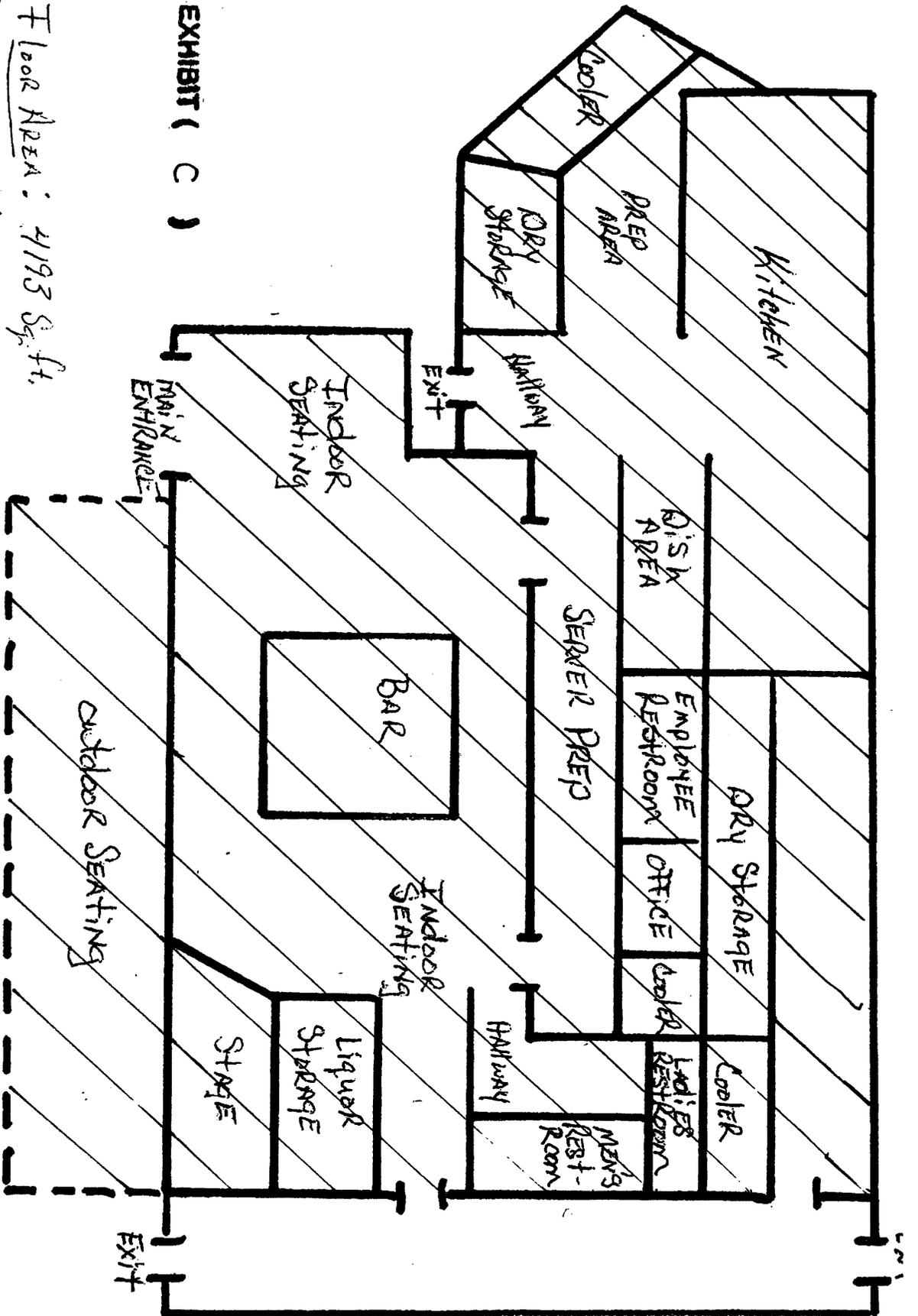
DESCRIPTION:

A tract or parcel of land lying in Section 24, Township 46 South, Range 23 East, Lee County, Florida, described as follows:

Commencing at the intersection of the Northeasterly right-of-way line of Estero Boulevard and the Southwest corner of Block "E", Crescent Park Addition as recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida; thence run N. $70^{\circ}37'09''$ W. along said Northeasterly right-of-way line for 77.82 feet to the point of beginning; thence continue N. $70^{\circ}37'09''$ W. along said Northeasterly right-of-way line for 117.93 feet; thence run N. $19^{\circ}22'51''$ E. for 94.80 feet; thence run S. $70^{\circ}37'09''$ E. for 29.08 feet; thence run N. $19^{\circ}31'29''$ E. for 42.50 feet; thence run S. $70^{\circ}28'31''$ E. for 80.73 feet to the West right-of-way line of Crescent Street as shown on Lee County Department of Transportation Project number 4965; thence run S. $00^{\circ}43'09''$ E. along said West right-of-way line for 103.86 feet; thence run S. $54^{\circ}21'33''$ W. along said right-of-way line for 48.28 feet (48.32 feet per right-of-way plans) to the point of beginning.

Said tract contains 16,452.7 square feet, more or less and is subject to easements, restrictions and reservations of record.

Bearings are based on the Northeasterly right-of-way line of Estero Boulevard as being N. $70^{\circ}37'09''$ W.



Floor Area: 4193 Sq. Ft.
 Seating Capacity: 158

CADONSKI'S

1113 ESTERD Blvd, Ft. Myers Beach, FL 33931

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 02-07**

WHEREAS, Seafarer's 2000, Inc. and Seafarer's 1997, Inc. have filed a request for Seafarer's Plaza to rezone 3.64 acres from Commercial Planned Development and C-1 to Commercial Planned Development (CPD) to permit up to 90,455 square feet of commercial uses and up to 65 hotel guest units in buildings not to exceed 40 feet above base flood elevation; and

WHEREAS, the subject properties are located at 1113 & 1133-1155 Estero Boulevard and 1150-1190 Fifth Avenue, Fort Myers Beach, Florida, legally described as shown in Exhibit "A"; and

WHEREAS, the applicant has indicated the property's current STRAP numbers are 24-46-23-W3-00006.0000, 24-46-23-W3-00206.0010, 24-46-23-W3-00206.0060, and 24-46-23-W3-00205.0070; and

WHEREAS, a public hearing was held before the Local Planning Agency, which recommended that the request be approved subject to numerous conditions; and

WHEREAS, several public hearings were held and the Town Council considered the following criteria, whenever applicable:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.**
- b. The testimony of any applicant.**
- c. The recommendation of staff.**
- d. The testimony of the public.**
- e. Whether the request is consistent with the goals, objectives, policies, and intent of the Town's Comprehensive Plan.**
- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.**
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.**
- h. Whether the request will be compatible with existing or planned uses.**
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.**
- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.**

NOW THEREFORE BE IT RESOLVED that the application for the parking garage is hereby denied; phases 1 and 2 are approved subject to the conditions listed below; Phase 3 is partially approved subject to the conditions listed below, and Phase 4 is conditionally approved subject to the conditions listed below. The following conditions and requirements are necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public and that are reasonably related to the applicants' request:

1. The development of this project must be consistent with the two-page Master Concept Plan entitled "Master Concept Plan for Seafarer's Plaza," "Received, April 8, 2002," last revised 04-08-02, except as modified by the conditions below. This development must comply with all requirements of the Fort Myers Beach LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan (MCP) are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. SCHEDULE OF USES

Accessory Uses and Structures
Administrative Offices
Animal Clinic
Bait & Tackle Shop
Banks and Financial Establishments (no drive-throughs)
Bar and Cocktail Lounge (see Condition # 5)
Broadcast Studio
Business Services Group I
Caretaker's Residence (Buildings C & E only)
Clothing Store General
Computers and Data Processing Services
Consumption on Premises (See Condition # 6)
Convenience Food and Beverage Store (no gas pumps)
Drug Store/Pharmacy
Entrance Gates
Food & Beverage Service-Limited
Food Stores Group I (excluding supermarket)
Gift and Souvenir Shop
Hardware Store
Healthcare Facility Group I
Hobby Toy and Game Shop
Hotel/Motel
Insurance Company
Laundromat/Laundry Facility & Dry Cleaning Group I
Library
Medical Office
Nonstore Retailers
Package Store
Parking Lots, Commercial
Paint, Glass, & Wallpaper
Personal Services Group I & II
Pet Services

Pet Shop
 Police or Sheriff's Station
 Post Office
 Recreational Facilities- Commercial Group I
 Real Estate Sales Office
 Rental or Leasing Establishment Group I & II
 Repair Shop Group I & II
 Restaurant, Fast Food (walk-In & existing McDonald's drive-thru only)
 Restaurant Group I, II, III
 Signs in accordance with LDC Chapter 30
 Social Services Group I & II
 Specialty Retail Shops Groups I, II
 Storage (indoor only, does not include mini-warehouse)
 Studios
 Temporary Uses (in accordance with LDC Chapter 34)
 Used Merchandise Stores Group I & II
 Variety Stores

b. SITE DEVELOPMENT REGULATIONS

Setbacks as shown on Approved Master Concept Plan

Maximum Uses

Retail: 40,592 SF
 Restaurant: 32,265 SF
 (includes bar & cocktail lounges)
 Outdoor seating: 4,533 SF
 Office: 13,065 SF
TOTAL: 90,455 SF (not including hotel guest units)
 Hotel guest units: 65

Uses must comply with maximum SF and footprints for Building A, C, D & E allowances shown on approved Master Concept Plan, and must also comply with the additional limitations described in Article III.B.1.c) of the development agreement.

Required and Projected Parking Based on Current LDC

3 parking spaces per 1000 square feet of any approved use, except 1 parking space per hotel unit (based on 4.5 per 1000 square feet and 1.5 per hotel unit, with 1/3 reduction allowed in overlay)

Phase 1 (all existing buildings, including Building A):

181 parking spaces
 Building A: 99 parking spaces
 Building B: *[BUILDING B WAS DENIED]*
 Building C: 105 parking spaces
 Building D: 45 parking spaces (1st floor)
 15 parking spaces (2nd floor)
 Building E: 73 parking spaces

If the minimum parking requirements in the LDC are lowered, the Developer may use the adjusted ratios for applying for development order approval for later phases.

c. PHASING

- Phase 1: As shown on approved Phase 1 MCP, includes addition to Seafarer's Mall and parking control gates.
- Phase 2: Replace existing Helmerich Plaza building with new Building E as shown on the build-out MCP.
- Phase 3: Replace existing McDonald's building with new Building D as shown on the build-out MCP, subject to the additional limitations described in Article III.B.1.c) of the development agreement.
- Phase 4: Demolish remaining Helmerich building on interior of block, then reconstruct the surface parking lot and construct new Building C along Crescent Street and Fifth Avenue as shown on the build-out MCP, subject to the additional limitations described in Article III.B.1.c) of the development agreement.

Additional Phasing Notes:

- i. Phases 3 & 4 may be reversed.
 - ii. Prior to the construction of Phases 3 or 4, the Development must demonstrate compliance with the required number of parking spaces either on-site, or through a binding off-site shared parking agreement, or by an approved amendment to this CPD allowing a deviation from the required number of spaces (see Article III.B.1.c) of the development agreement).
 - iii. Build-out of all phases will be no later than December 31, 2017.
3. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach LDC may be required to obtain a local development order.
 4. Approval of this rezoning does not give the Developer an undeniable right to receive local development order approval. This development must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by LDC deviations approved as part of this planned development.
 5. The requested Dance Hall/Night Club is DENIED. However, a Type III Restaurant may be developed in the existing Helmerich Plaza building on the interior of the block with no more than 720 square feet dedicated for use as a dance floor. Operation of the restaurant must comply with LDC Chapter 34-1264, which states in part that the sale of alcoholic beverages may not account for more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period. Maximum hours of operation for the restaurant shall be 6:00 a.m. to 2:00 a.m., and in no case later than the hours of food service operation.
 6. Consumption on Premises of Alcoholic Beverages.
 - a. Consumption on premises is permitted by right in restaurants.

- b. Any other uses, including Bars and Cocktail Lounges, and in conjunction with outdoor seating, will require a Special Permit, except as allowed by Condition #7.
7. Outdoor Seating.
- a. Consumption on premises is allowed in the outdoor seating areas approved in Special Permit 92-2-6-SP-3, AA COP2000-00020, and AA COP2000-00064 as described below:
 - 1. 1677 SF and tables shown on MCP with 84 outdoor seats (1st floor)
 - 2. 1571 SF with 132 outdoor seats (1st floor)
 - 3. 1017 SF with 56 outdoor seats (2nd floor)
 - 4. 1086 SF with 60 outdoor seats (3rd floor)
 - 5. Duesseldorf's (1035 SF, 1st floor)
 - b. All consumption on premises in the Seafarer's Mall (Building A) are approved for use in conjunction with restaurants and must comply with LDC Section 34-1264 which states no more than 49% of gross sales may be from alcoholic beverages. The only exception to this requirement is the proposed restaurant on the third floor of Seafarer's Mall in which no more than 70% of the gross sales may be from alcoholic beverages. A full menu of food items must be offered.
 - c. Hours of operation for consumption on premises within these outdoor seating areas will be the same as the restaurant's food service operations, but in no case later than 12:00 a.m. and earlier than 10:00 a.m.
 - d. Live entertainment is limited to accordion and string acoustic musicians and is limited to 11:00 p.m. No other live entertainment is permitted in the outdoor seating areas.
 - e. Recorded music may be piped into the outdoor seating areas until 11:00 p.m.
 - f. All other outdoor seating areas shown on the approved Master Concept Plan must have a special permit prior to allowing consumption on premises.
8. One tattoo and piercing establishment is permitted within the approved commercial Planned Development. If located in the existing Papa John's building, the building will be repainted to be consistent with the colors and style of Seafarer's Plaza. All signage for the use must be brought into compliance with Chapter 30 of the LDC. The freestanding Helmerich Plaza sign next to the building must be removed. All of these changes must be completed within 30 days of the approval of this resolution.
9. All approved buildings must be in substantial conformance with the architectural elevations presented to the Town Council, entitled "Seafarer's Plaza", prepared by McHarris Planning and Design, stamped "Received Oct. 29, 2001" and attached to the development agreement as Exhibit "C." Minor changes and refinements to the architectural drawings can be made by the Developer if approved by the Town Manager or a Town appointed architectural review committee. Significant changes to the architectural drawings can be made by the Developer only through an amendment to the development agreement.
10. The CPD zoning granted by this resolution does not become effective until the development agreement between the Town of Fort Myers Beach and all legal and equitable owners of the property has been executed by all parties. Any violation of any term of the development agreement by the owners shall also constitute a violation of this resolution.

11. Prior to issuance of a certificate of completion for the parking control gates, directional arrows will be painted onto the parking lot surface which reflects the internal traffic pattern shown on the Phase 1 MCP.
12. Prior to issuance of local development order for any portion of Phases 2 or 3 the applicant will submit a sign package for the entire Seafarer's Plaza development. If the sign package is not in substantial compliance with LDC Chapter 30, than an amendment to the approved CPD will be necessary.
13. **ACTION ON DEVIATIONS:**
 1. APPROVE – allows connection separation on Fifth Avenue of 30' and 101' instead of 125'
 2. APPROVE – allows connection separation of 72' and 121' on Crescent Street instead of 125'0
 3. WITHDRAWN
 4. APPROVE – allows connection separation of 101' on Crescent Street near Fifth Avenue instead of 125'
 5. APPROVE – allows a multiplier of 3 hotel guest units for each dwelling unit instead of the allowed 1:1. In no case will the total number of hotel guest units exceed 65, and approval of any hotel guest units is subject to the additional limitations described in Article III.B.1.c) of the development agreement.
 6. APPROVE – allows stacking of 4 cars before the drive-through menu board instead of 5.
 7. APPROVE – allows hotel guest units 600 & 700 square feet in size instead of the maximum 550 SF, however the total SF of the hotel units cannot exceed 42,250 SF, and approval of any hotel guest units is subject to the additional limitations described in Article III.B.1.c) of the development agreement.
 8. APPROVE – allows loading and unloading to occur in the identified alleyway. Vehicles may only be parked in the public alley while loading or unloading or left unattended. Access from the alley shall remain open at all other times.
 9. APPROVE – allows the control gates to be located as shown on the Phase 1 MCP.
 10. APPROVE – allows the stacking lanes to vary in width from 15' to 9'.
 11. WITHDRAWN
 12. APPROVE – One 24 SF identification sign for the desired use on the third floor (Tradewind's) will be permitted on the stairwell, and allow a second, separate, 24 SF identification sign for Tetley's to be located on the stairwell. In no case will either sign exceed 24 SF each. Approval of this deviation does not relieve the applicant of the requirement to obtain the necessary sign permits, which includes review by Lee County Environmental Sciences for compliance with sea turtle nesting regulations. Approve a temporary 24 SF identification sign for parking at the corner of Estero Boulevard and Crescent Street; this temporary sign will be allowed for a maximum of six months from the date of this approval, will be mounted on the wall of the McDonald's on Crescent Street, and will not be illuminated.

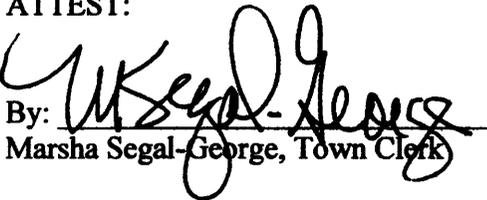
The foregoing resolution was adopted by the Fort Myers Beach Town Council on a motion by Council Member Van Duzer and a second by Council Member Cain; upon being put to a vote, the result was as follows:

Howard Rynearson	nay
Daniel Hughes	aye
Bill Thomas	nay
W. H. "Bill" Van Duzer	aye
Terry Cain	aye

APPROVED this 15th day of April, 2002.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Marsha Segal-George, Town Clerk

By: 
Daniel Hughes, Mayor

Approved as to form by:

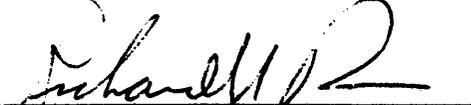

Richard V.S. Roosa, Town Attorney

Exhibit "A" — page 1 of 2
LEGAL DESCRIPTION

LEGAL DESCRIPTION

DESCRIPTION: (TRACT "B")

Part of Block 6, Business Center Subdivision as recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida and part of Section 24, Township 46 South, Range 23 East, Lee County, Florida, described as follows:

Commencing at the intersection of the Northeasterly right-of-way line of Estero Boulevard and the Southwest corner of Block "E", Crescent Park Addition as recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida; thence run N.70°37'09"W. along said Northeasterly right-of-way line for 195.75 feet to the point of beginning; thence continue N.70°37'09"W. along said right-of-way line for 93.70 feet; thence run N.19°22'51"E. for 123.05 feet; thence run N.70°37'09"W for 50.02 feet; thence run N.19°22'51" E. for 35.01 feet to the Southeasterly corner of Lot 7, Block 6, of the aforesaid Business Center Subdivision; thence run N.70°37'09"W. for 100.05 feet; thence run N.22°23'59"W. for 80.04 feet to the Northwesterly corner of Lot 6, Block 6, of said Business Center Subdivision, being the Southerly right-of-way line of Fifth Avenue; thence run N.67°36'01"E. along said right-of-way line for 205.16 feet; thence run N.25°59'51"E. along the Southeasterly right-of-way line of said Fifth Avenue for 16.45 feet to a point on a curve; thence run Northeasterly along said right-of-way line for 75.05 feet along the arc of a curve concave Northwesterly, with a radius of 209.00 feet, a delta of 20°34'26", a chord bearing of N.35°32'37"E. and a chord distance of 74.65 feet to a point of reverse curvature; thence continue Northeasterly along said right-of-way line for 108.07 feet along the arc of a curve concave Southeasterly, with a radius of 151.00 feet, a delta of 41°00'25", a chord bearing of N.45°45'34"E. and a chord distance of 105.78 feet; thence run S.64°00'09"E. along the Southerly right of way line of said Fifth avenue for 45.46 feet (said line not radial to the previously described line) to a point on the Westerly right-of-way line of Crescent Street; thence run S.01°20'13"E. along the Westerly right-of-way line of said Crescent Street for 48.08 feet; thence run S.00°09'30"W. along said Westerly right-of-way line for 350.04 feet; thence run S.00°39'36"E. along said right-of-way line for 19.94 feet; thence run N.70°28'31"W. for 80.88 feet; thence run S.19°31'29"W. for 42.50 feet; thence run N.70°37'09"W. for 29.08 feet; thence run S.19°22'51"W. for 94.80 feet to the point of beginning.

Said tract contains 2.330 acres, more or less and is subject to easements, restrictions and reservations of record.

TOGETHER WITH: (TRACT "C")

DESCRIPTION:

Lots 7, 8 & 9, Block 5, Business Center Subdivision as recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida, Said Lot 7 is less right-of-way taken by Florida Department of Transportation for State Road 865.

Said tract contains 9,041.5 square feet, more or less and is subject to easements, restrictions and reservations of record.

Bearings are based on the Northeasterly right-of-way line of Estero Boulevard as being N.70°37'09"W.