

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2010-08  
FMBSEZ2010-0002 (Skye's Restaurant Resolution)

WHEREAS applicant, Pink Haus Corporation, DBA Skye's Restaurant, authorized by WCSJR II Corporation, owner of the property (collectively "applicant") have requested a special exception in the SANTINI zoning district to allow consumption-on-premises of alcoholic beverages, to include beer, wine and liquor, in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership; and

WHEREAS the subject property is located at 7205 Estero Boulevard, Fort Myers Beach, FL 33931 (Building D, Units 8, 9 and 10 of Santini Plaza Shopping Center); and

WHEREAS the applicant has indicated that the STRAP for the subject property is 03-47-24-W1-00011.0000 and the legal description of the subject property is as described in Exhibit A which is attached hereto 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 August 24, 2010; and

WHEREAS at the hearing the LPA gave full and complete consideration to the request of the 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.

IT IS HEREBY RESOLVED BY THE LPA 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 and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a special exception to permit consumption on premises of beer, wine and liquor in the SANTINI zoning district.

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. *The area of the subject establishment used for consumption on premises must be confined entirely to the building areas shown on the floor plan attached hereto and incorporated herein by reference as **Exhibit B**.*

2. *Music and other audible entertainment are prohibited before 10:00 A.M. and after 10:00 P.M. of each day in outdoor seating areas, and must comply at all times with applicable ordinances.*

3. *Sales, service, and consumption of alcoholic beverages must not begin earlier than 7:00 AM and must end no later than 2:00 AM during each day.*

4. *The use must comply at all times with the provisions of LDC Section 34-1264(k), as may be amended from time to time, and must at all times be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509, Florida Statutes, and applicable state agency rules.*

5. *The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles provided in LDC chapter 14, article II.*

### **RECOMMENDED 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 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:

*Other units within the Santini Plaza Shopping Center have received approval for alcoholic beverage uses over the course of many years. Dwelling units within 500 feet of the subject establishment are in high-rise buildings and are separated from the subject establishment by other buildings and by wide parking areas.*

2. The requested special exception, as conditioned, **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, in an existing shopping center near other restaurants, retail stores, and other commercial activities. Comp Plan **Policy 4-B-6**, regarding the Pedestrian Commercial FLUM, states that commercial activities must contribute to the pedestrian-oriented public realm. The proposed outdoor seating area is located beneath roof overhangs and covered outdoor passageways, enhancing the pedestrian environment within an existing automobile-oriented shopping center that is not currently proposed to be redeveloped.*

3. The requested special exception, as conditioned, **MEETS OR EXCEEDS** all performance and locational standards set forth for the proposed use.

*A restaurant is a use permitted by right in the SANTINI zoning district. Because dwelling units under separate ownership are located within 500 feet of the subject property, a special exception is necessary in order to allow an outdoor seating area. Performance and locational standards for the restaurant use were addressed through permitting for prior remodeling activities. The number of parking spaces provided in the existing parking lot at Santini Plaza exceeds the number of spaces required for the indoor floor areas and the additional area currently proposed to be used for outdoor seating.*

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

*Construction of additional structures in environmentally critical areas has not been requested or permitted. As conditioned, the use will be required to comply with current sea turtle protection standards.*

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 existing uses in the immediate vicinity are consistent with the mix of uses commonly found in shopping centers. Surrounding the shopping center are a commercial marina, a convenience store with fuel pumps, an office building, a retail store, a fire station, a public utility facility, and several high-rise multifamily buildings. Within the Pedestrian Commercial Future Land Use Map category and the SANTINI zoning district the shopping center could be redeveloped to fit the vision for the future of this commercial center of the south end neighborhood. Under the current circumstances the proposed outdoor seating would improve the pedestrian-orientation of the existing shopping center. Outdoor seating that might be appropriate if the shopping center were redeveloped can be addressed at that the time if and when redevelopment is proposed.*

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:

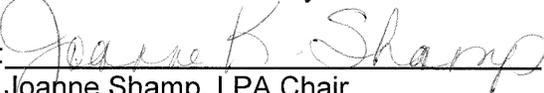
*The consumption on premises of alcoholic beverages use, as conditioned, will be required to comply with the applicable standards in LDC Chapter 34, Article IV, Division 5, for consumption on premises in a restaurant regardless of the type or series of state license. The appropriate limitations on an outdoor seating area for consumption on premises that is allowed by special exception are for Town Council to determine through the hearing process, during which process they should find that the conditions attached are reasonably related to the special exception requested. Outdoor display of goods and merchandise, including outdoor dining, that is located between the outer wall of stores and the right-of-way, is limited to the DOWNTOWN zoning district by LDC Section 34-3004.*

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Van Duzer and second by LPA Member Ryffel, and upon being put to a vote, the result was as follows:

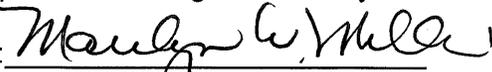
Joanne Shamp, Chair	aye	Bill Van Duzer, Vice Chair	aye
Carleton Ryffel, Member	aye	Rochelle Kay, Member	aye
Chuck Moorefield, Member	absent	John Kakatsch, Member	nay
Joe Kosinski, Member	abstained		

DULY PASSED AND ADOPTED THIS 24<sup>th</sup> day of August, 2010.

LPA of the Town of Fort Myers Beach

By:   
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By:   
Marilyn W. Miller, Esquire  
LPA Attorney

ATTEST:

By:   
Michelle Mayher, Town Clerk

**Exhibit A**  
**SEZ2010-0002**

A tract or parcel of land lying in Government Lot 2 of Section 03, Township 47 South, Range 24 East, Estero Island, Lee County, Florida, said parcel being more particularly described as follows:

**Beginning** at the intersection of the easterly right-of-way line of Estero Boulevard and the north line of said Government Lot 2; thence S.  $18^{\circ}34'20''$  E. on said right-of-way line for 740.31 feet; thence N.  $71^{\circ}11'00''$  E. on the northerly line of a roadway (60 feet wide, recorded in Official Record Book 938, Page 610, Public Records of Lee County, Florida) for 236.61 feet; thence N.  $00^{\circ}49'00''$  W. for 631.39 feet; thence S.  $89^{\circ}11'00''$  W. on said north line of Government Lot 2 for 450.79 feet to the **Point of Beginning**.

