

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2011-02  
FMBSEZ2010-0003 (Mermaid Lounge & Liquors)

WHEREAS, applicant Voxen, Inc. has requested a Special Exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages in an outdoor seating area within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, the subject property is located at 1204 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0140A.0030 and the legal description of the subject property is Lots 3 through 7, Block A, Crescent Park Subdivision, according to the plat thereof recorded in Plat Book 4, Page 39 in the Public Records of Lee County Florida; and

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.

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 in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages in an outdoor seating area within 500 feet of a dwelling unit under separate ownership, with such approval subject to the following conditions:

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. *The area of the subject property used for outdoor consumption on premises must be confined entirely to the proposed deck and Tiki Hut shown on the attached survey and incorporated herein by reference as **Exhibit A**. This area must be enclosed by a 42 inch railing, except for access points, further delineating the outdoor consumption area from other outdoor 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. *Music and other audible entertainment are prohibited before 11:00 am and after 10:00 pm Sunday through Thursday and 11:00 am and 11:00 pm on Friday and Saturday in outdoor seating areas, and must comply at all times with applicable Town noise ordinances.*

### **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:

*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."*

*As contemplated in the Comprehensive Plan, the Times Square area has continued to emerge as a vibrant urban core for the Town, and as such the area can support a more intensive variety 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 subject property is located in what the Comprehensive Plan terms the 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." The applicant's request for outdoor consumption on premises is in fitting with the vision for the area as described above.*

*Further, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Downtown Core/Times Square area 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 in keeping with this vision, by providing an additional venue for the enjoyment of the unique 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. (See Section 34-1264(a)(2)).*

*The applicant's request is appropriate at this site due to the subject property's location in the Downtown Core Area, and is in keeping with the goals, objectives, policies and intent of the Comprehensive Plan which describes a vibrant tourist commercial district in the Downtown Core.*

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 the environmentally critical areas and natural resources of Fort Myers Beach as the subject property, proposed deck and Tiki Hut in question are located in an established commercial district that is located far from environmentally critical areas and sensitive natural resources.*

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, is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area does not require that it be transformed from an intensively commercial area into a primarily residential district. It possesses a vibrant mix of uses and as such Staff feels the applicant's request is compatible and appropriate within its neighborhood.*

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 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 general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

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

Joanne Shamp, Chair	AYE	Bill Van Duzer, Member	AYE
Carleton Ryffel, Vice Chair	AYE	Rochelle Kay, Member	AYE
Joseph Kosinski, Member	AYE	John Kakatsch, Member	AYE
Hank Zuba, Member	AYE		

DULY PASSED AND ADOPTED THIS 11th day of January, 2011.

LPA of the Town of Fort Myers Beach

By: Joanne K Shamp  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: Marilyn W. Miller  
Marilyn W. Miller, Esquire  
LPA Attorney

ATTEST:

By: Michelle Mayher  
Michelle Mayher, Town Clerk