

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2012- 016  
FMBSEZ2012-0001 (Smokin' Oyster Brewery)

WHEREAS, applicant William Freeman has requested a special exception in the DOWNTOWN zoning district to allow the expansion of outdoor seating, with consumption-on-premises, into the Town right-of-way (Old San Carlos Blvd and Third Street) immediately adjacent to the restaurant located on the applicant's property; and

WHEREAS, the subject property is located at and adjacent to 340 Old San Carlos Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the restaurant parcel is 24-46-23-W3-00203.0010 and the legal description of the restaurant parcel is Lot 1 Block 3 Business Center subdivision as recorded on Page 9 Plat Book 9; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on October 9, 2012; 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/DENY** the applicant's request for a special exception in the DOWNTOWN zoning district to allow the expansion of outdoor seating, with consumption-on-premises, into the Town right-of-way (Old San Carlos Blvd and Third Street) immediately adjacent to the restaurant located on the applicant's property, with any approval subject to the following conditions:

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. *Consumption on premises is limited to the building located on the subject property at 340 Old San Carlos Blvd and the additional areas as depicted on the attached Exhibit B.*

2. *All conditions of approval from Resolution 05-06 remain in force with the exception of Condition #4*
3. *Hours of operation for consumption on premises shall be limited to the hours of 7:00 AM to 2:00 AM, daily for inside the building and the additional deck area. Hours of operation for consumption on premises for the Old San Carlos Boulevard sidewalk are shall be limited to 10am to 12 midnight, daily.*
4. *Upon approval of the special exception, the applicant must enter into a lease agreement with the Town, to be renewed annually, with rates as set forth by Town Council, for the use of the Town right-of-way on both Old San Carlos Boulevard and Third Street. Additionally, the applicant will execute a hold harmless agreement with the Town for the use of such right-of-way. If the applicant fails to renew the annual lease, this Special Exception shall be rendered null and void.*
5. *All uses of Town property are subject to the conditions established in LDC Section 34-678(f).*
6. *All work proposed to be done will require Limited Review Development Order and any other permits determined to be necessary at the time of permitting*

#### **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 **do/do not** exist that make the requested approval, as conditioned, appropriate:
2. The requested special exception, as conditioned, **is/is not** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:
3. The requested special exception, as conditioned, **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use.
4. The requested special exception, as conditioned, **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources:
5. The requested special exception, as conditioned, **will/will not** be compatible with existing or planned uses and **will/will not** cause damage, hazard, nuisance or other detriment to persons or property:
6. The requested special exception, as conditioned, **will/will not** be in compliance with the 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 \_\_\_\_\_ and seconded by LPA Member \_\_\_\_\_ and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	AYE/NAY	Dan Andre, Member	AYE/NAY
Al Durrett, Member	AYE/NAY	John Kakatsch, Member	AYE/NAY
Jane Plummer, Member	AYE/NAY	Alan Smith, Member	AYE/NAY
Hank Zuba, Member	AYE/NAY		

DULY PASSED AND ADOPTED THIS **9th** day of OCTOBER, 2012.

Local Planning Agency of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Fowler White Boggs, P.A.  
*LPA Attorney*

ATTEST:

By: \_\_\_\_\_  
Michelle Mayher  
*Town Clerk*



*Town of Fort Myers Beach*  
**COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

**TYPE OF CASE:** Special Exception  
**CASE NUMBER:** SEZ2012-0001  
**LPA HEARING DATE:** October 9, 2012  
**LPA HEARING TIME:** 9:00 AM

**I. APPLICATION SUMMARY**

Applicant: William Freeman  
David Easterbrook, authorized agent

Request: A special exception in the DOWNTOWN zoning district to allow the expansion of outdoor seating, with consumption-on-premises, into the Town right-of-way (Old San Carlos Blvd and Third Street) immediately adjacent to the building located on the subject property

Subject property: BUSINESS CENTER  
BLK 3 PB 9 PG 9  
LOT 1

Physical Address: 340 Old San Carlos Boulevard Fort Myers Beach FL, 33931

STRAP #: 24-46-23-W3-00203.0010

FLU: Pedestrian Commercial

Zoning: DOWNTOWN

Current use(s): Restaurant with 4COP alcohol license

Adjacent zoning and land uses:

North: Vacant  
DOWNTOWN  
Pedestrian Commercial

South: Parking Lot  
Commercial Planned Development (CPD)  
Pedestrian Commercial

East: Parking Lot  
Commercial Planned Development (CPD)  
Pedestrian Commercial

West: Parking Lot  
Commercial Planned Development (CPD)  
Pedestrian Commercial

## **II. BACKGROUND AND ANALYSIS**

### **Background:**

The applicant has requested a special exception in the DOWNTOWN zoning district to allow consumption-on-premises and expansion of the outdoor seating area, into the Town right-of-way (Old San Carlos Blvd and Third Street) that is immediately adjacent to the Smokin' Oyster Brewery restaurant.

Land Development Code (LDC) Section 34-1264(a)(2)(a)(2) requires a special exception when an establishment wants to provide outdoor seating for patrons to consume alcoholic beverages.

Smokin' Oyster Brewery, 340 Old San Carlos Boulevard, is a restaurant with a full service bar and liquor license (4COP which includes beer, wine and liquor) located at the corner of Old San Carlos Boulevard and Third Street in the Downtown area of Fort Myers Beach. The restaurant is a popular dining establishment and wishes to expand their serving capacity. They are requesting to expand their dining and service area to incorporate two additional areas. The first area, a covered deck addition extending into the right-of-way for Third Street, measures 364 square feet; the second area, an existing paver sidewalk that is part of the Old San Carlos Boulevard improvements, measures 768 square feet. These areas are depicted on the attached *Exhibit A*.

The applicant is also requesting a waiver from the parking requirements that the additional restaurant area would require.

### **Analysis:**

The subject property is located in the DOWNTOWN zoning district within walking distance to Times Square from Old San Carlos Boulevard. This district is home to a variety of establishments offering a range of food and beverage options, so a request for outdoor consumption on premises itself is not a unique or unusual request. In this case, however, the applicant is requesting to expand their outdoor consumption on premises area into the Town right-of-way.

Any use of the Town right-of-way by a business requires a lease agreement, monthly or annual rent payments and a hold harmless agreement. The applicant understands that any

approval of the proposed use into one or both Town right-of-ways – Third Street and Old San Carlos Boulevard – will require these documents and agreements.

The Town currently leases its right-of-way in various places across the island. The most common area where this occurs is Times Square, where six (6) businesses lease portions of the pedestrian plaza for private commercial uses. The Town also has a lease with another business across Old San Carlos Boulevard from the subject property, so in this respect, the applicant's request is not inconsistent with the surrounding properties. Furthermore, LDC Section 34-678(f) describes, in detail, the rules and regulations for restaurants extending their operations onto public property. The only element that Section 34-678(f) does not address is including the sales and consumption of alcohol onto public property via these extensions.

Staff is confident, however, that the LDC gives clear guidance to the approvals necessary for outdoor consumption on premises through the regulations found in Section 34-1264(a)(2). These requirements have resulted in the property owner bringing this application forward as a special exception for public hearing.

The subject property is located in the DOWNTOWN zoning district and is surrounded by and within walking distance of other establishments that have outdoor consumption on premises. With this in mind, Staff is generally supportive of the requested use of expanding the outdoor consumption on premises for the existing restaurant. Staff has, however, reviewed in more detail the location and function of the requested use.

The applicant is requesting two areas for expansion: 1) a covered deck area measuring 364 square feet that extends into the Third Street right-of-way and 2) use of the entire paver sidewalk area, 768 square feet, that is immediately adjacent to the restaurant. . See *Exhibit A*.

Staff has no concerns with the proposed covered deck area, provided that all work is done up to current building and floodplain code and all required permits are pulled. For the expansion into the sidewalk area, however, there are two main concerns: 1) dominion and control and 2) accessibility.

Of greatest concern is how to define dominion and control (the defined limits) of the licensed premises. In most other outdoor consumption on premises special exception requests the Town has approved, the area proposed for outdoor expansion had been confined to a deck. A deck allows for a clear definition of the licensed area with material changes, railing requirements and other visual cues that assist law enforcement in determining the limits of the licensed premises. With the recent passage of Ordinance 12-03, consumption on premises on the sandy beach requires a rope and post configuration to define the licensed premises. Businesses in Times Square use either a small fence to define their licensed premises or a change in color of the paver bricks.

The applicant has not proposed anything that will provide physical visual cues to define the area of dominion and control for the sidewalk area. That being said, an argument could be made that the curb between the sidewalk and the edge of pavement of Old San Carlos is clear definition. The curb does extend for three of the four sides of the area in question, and the final side (southern most edge of the building to the street) could be defined with something as simple as a few potted plants to mark the area.

An additional concern of both Community Development and Public Works Staff is the accessibility of the sidewalk. At its narrowest, the sidewalk is 15' wide. The applicant is proposing to utilize approximately half of that width for a single row of tables and a 'waiting bench'. See *Exhibit A*. The minimum ADA requirement for an accessible sidewalk is 5' which is met by the proposal. If restaurant patrons are standing in that clear zone waiting to be seated and/or served, accessibility and a clear pathway for sidewalk users could become an issue. However, a condition requiring the restaurant to maintain a clear path at all times to ensure proper accessibility could resolve this issue.

Prior to submitting the application, the applicant met with Staff (Community Development and Public Works), the Lee County Sheriff's Office and a local officer with Florida's Division of Alcoholic Beverages and Tobacco (ABT).

ABT did not identify any concerns over the request, provided that it met all local (i.e. Town) zoning requirements.

Lt. Ciolino of the Lee County Sheriff's Office responded to Staff's email requesting the ability to review and comment on of the applicant's request. See *Exhibit B*. Lt. Ciolino did express a concern over patrons blocking the sidewalk (an existing condition) and the serving and consuming of alcohol on the sidewalk. He closed his email with the following: *"We as Law Enforcement officers do not write code, make policy, or approve licensing for the town. We also are NOT in the business of interfering with the growth of any small business. I do not approve of or disapprove of Mr. Freemans request, I am simply pointing out my areas of concern as you requested."*

Public Works Staff, like Community Development Staff, identified concerns over dominion and control, noting a specific concern concerning restaurant patrons loitering around the intersection of Third Street and Old San Carlos and the potential of car/pedestrian conflict; as well as maintaining sidewalk accessibility. Further, as the department responsible for maintaining the sidewalk and street furniture in the proposed expansion area, concerns were raised about additional trash and maintenance resulting from the request. The applicant stated in a meeting with Staff that they understood this concern and noted that it would be in their interest as well to help ensure the cleanliness of the sidewalk because it would reflect poorly upon their business establishment.

Additionally, the applicant requested two more items as part of this special exception; 1) a waiver from the additional parking required for the expanded dining and service area and 2) modification of the hours of operation from the current 10am to 12 midnight (See *Exhibit C* for hours restrictions relative to Resolution 05-05) to 7am until 2am, the maximum allowed by Ord 96-06. .

The total proposed additional area is 1,132 square feet. Utilizing the requirements found in Section 34-2020(d)(2) and the off-street parking reductions found in Section 34-676, the applicant would be required to provide 5 additional parking spaces to accommodate the increase in restaurant dining and service area. It should be noted that currently the subject property does not provide any on-site parking because the parcel is too small to accommodate it. The property owner has been utilizing Town right-of-way, along Third Street, to meet the parking requirements for the restaurant. Staff has determined that this waiver request should be considered as part of the entire application request and should be

decided by Town Council after consideration in public hearing by the Local Planning Agency.

The applicant indicates they intend to operate between the hours of 7:00 am and 2:00 am, hours that are at the maximum set forth in Town Ordinance 96-06. Resolution 05-06, (See *Exhibit C*) which granted the original approval for consumption on premises, established three different sets of hours. Town Council may find that a new condition modifying these hours of operation is necessary to simplify this element for both the restaurant's benefit and for ease of enforcement.

Overall this request for outdoor consumption on premises in the Town right-of-way and on Town sidewalk is a case of first impression for Staff. There is no precedent to guide Staff in making its recommendation. However, provided appropriate conditions are included, Staff is of the opinion that the request is compatible with the surrounding property.

Findings and Conclusions:

1. *Whether there exist changed or changing conditions [that] make approval of the request 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, 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.....improvements have sparked a renewed interest in Times Square among most islanders and have spurred a healthy movement to upgrade existing buildings."

As contemplated in the Comprehensive Plan, the Times Square/Downtown 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 that are appealing and attractive to residents and visitors alike. The applicant's request is consistent with this policy.

2. *Whether the request 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."

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. Further emphasizing this policy is Section 34-678(f) which provides for use of public property for outdoor dining. The applicant's request is consistent with this vision.

*3. Whether the request 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 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. Outdoor dining, both on private and on public property is encouraged by the Comprehensive Plan and the Land Development Code. Approval of the applicant's request along with conditions requiring appropriate building permits and leases for the use of Town right-of-way will ensure that all performance standards are met.

*4. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The applicant's request will have no negative effects on the environmentally critical areas and natural resources of Fort Myers Beach because the subject property is located in an established commercial district, landward of the coastal construction line(s) and far from environmentally critical areas and sensitive natural resources.

*5. Whether the request will be compatible with existing or planned uses and 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. The Comprehensive Plan's vision for this area does not require that it be transformed from an intensively commercial area into a primarily residential district or any other use. It possesses a vibrant mix of uses, and as such, Staff feels the applicant's request is compatible and appropriate within its neighborhood.

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

The 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 not limited to §34-671 et seq. 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.

### **III. RECOMMENDATION**

Staff recommends **APPROVAL WITH CONDITIONS** of the requested special exception to expand outdoor seating with consumption-on-premises into the Town right-of-way.

Recommended conditions for approval are as follows:

1. Consumption on premises is limited to the building located on the subject property at 340 Old San Carlos Blvd and the additional areas as depicted on the attached Exhibit B.
2. All conditions of approval from Resolution 05-06 remain in force with the exception of Condition #4
3. Hours of operation for consumption on premises shall be limited to the hours of 7:00 AM to 2:00 AM, daily for inside the building and the additional deck area. Hours of operation for consumption on premises for the Old San Carlos Boulevard sidewalk are shall be limited to 10am to 12 midnight, daily.
4. Upon approval of the special exception, the applicant must enter into a lease agreement with the Town, to be renewed annually, with rates as set forth by Town Council, for the use of the Town right-of-way on both Old San Carlos Boulevard and Third Street. Additionally, the applicant will execute a hold harmless agreement with the Town for the use of such right-of-way. If the applicant fails to renew the annual lease, this Special Exception shall be rendered null and void.
5. All uses of Town property are subject to the conditions established in LDC Section 34-678(f).
6. All work proposed to be done will require Limited Review Development Order and any other permits determined to be necessary at the time of permitting

### **IV. CONCLUSION**

Staff recommends **APPROVAL WITH CONDITIONS** of the requested special exception to expand outdoor seating with consumption-on-premises into the Town right-of-way.

#### Exhibits:

Exhibit A – Site Plan

Exhibit B – Email from Lt. Ciolino

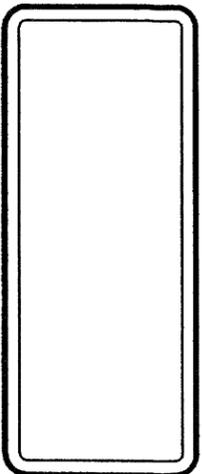
Exhibit C – Resolution 05-06

3 RD. STREET

EXHIBIT A

OLD SAN CARLOS BLVD.

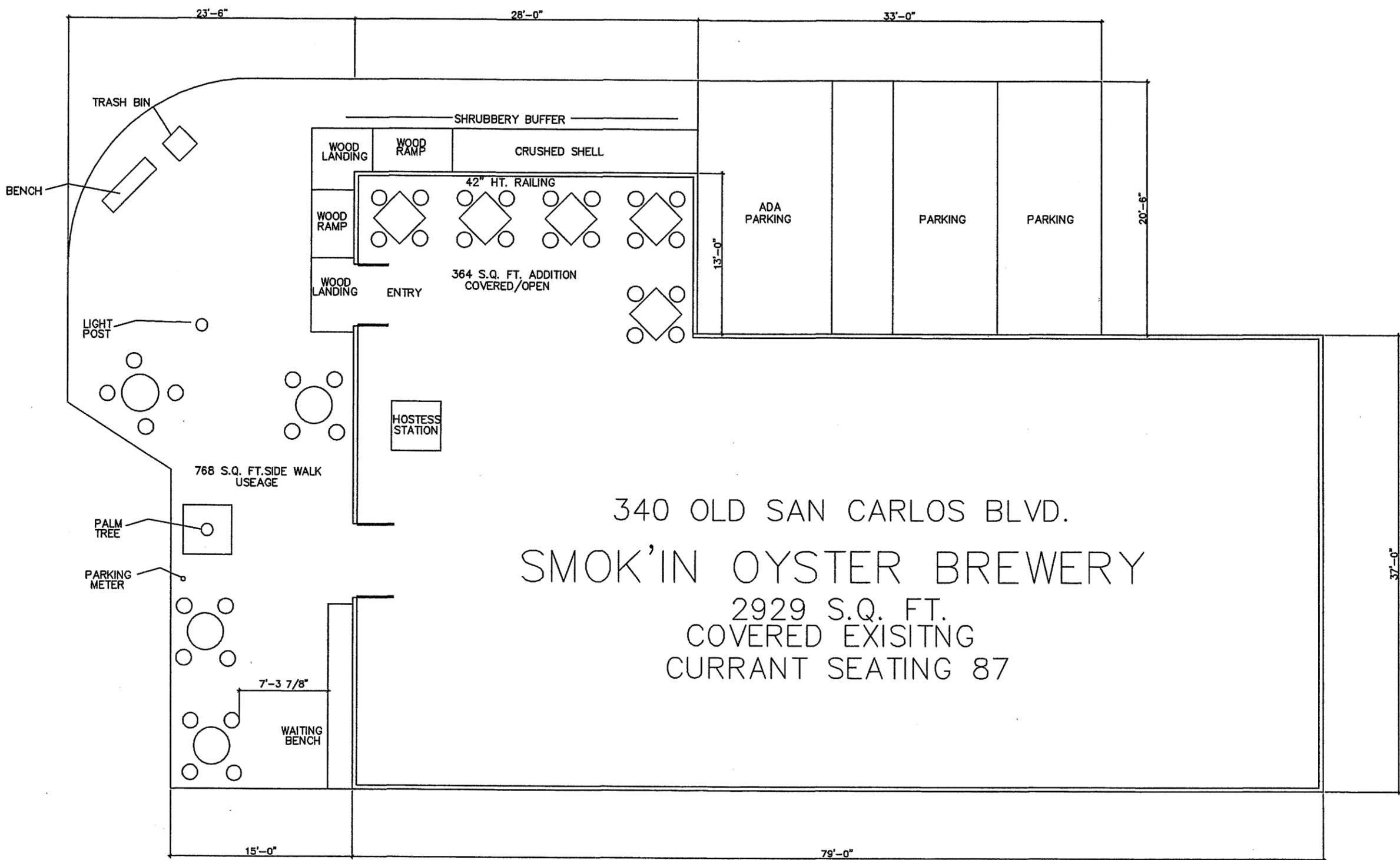
REVISIONS



340 OLD SAN CARLOS BLVD.  
 DECK EXTENSION  
 FORT MYERS BEACH, FLORIDA 33931

drawn by DME
checked by JCK
date 8/30/12
scale
job no. JOB

SHEET NO.



ORIGINAL

EXHIBIT B

**Leslee Chapman**

---

**From:** Ciolino, Mike <MCiolino@sheriffleefl.org>  
**Sent:** Wednesday, September 05, 2012 3:11 PM  
**To:** Leslee Chapman  
**Cc:** Capt. Matt Powell  
**Subject:** RE: 340 Old San Carlos

Hi Leslee,

Mr. Freeman asked Captain Powell and me to come down to the SOB where he walked us through his plans. I expressed my concern for his patrons blocking the sidewalk for pedestrians. As you may or may not know Mr. Freemans' establishment is very busy and already has a large amount of sidewalk traffic. My other concern was the extension of premises he is going to be requesting for the serving of alcohol on a public sidewalk. We as Law Enforcement officers do not write code, make policy, or approve licensing for the town. We also are NOT in the business of interfering with the growth of any small business. I do not approve of or disapprove of Mr. Freemans request, I am simply pointing out my areas of concern as you requested.

Lt. Mike Ciolino

---

**From:** Leslee Chapman [mailto:leslee@fortmyersbeachfl.gov]  
**Sent:** Wednesday, September 05, 2012 10:22 AM  
**To:** Ciolino, Mike  
**Cc:** Walter Fluegel  
**Subject:** 340 Old San Carlos

Lt. Ciolino,

Attached you will find an application from Bill Freeman to extend his outdoor COP onto the sidewalk in from of his restaurant, Smokin' Oyster Brewery. Walter has asked that I forward you this copy of the application and asks that you provide us with comments, should you have any, regarding the request.

When I did a preliminary review of the site plan, as provided by the applicant, it appears that they included part of Old San Carlos Blvd in their request. Rest assured Town Staff would not recommend that the outdoor COP extend into the street, just the sidewalk area.

If you have any questions please feel free to contact me.

Thank you,

**Leslee Chapman**  
*Zoning Coordinator*

Town of Fort Myers Beach  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931  
Phone: 239-765-0202 ext 105  
Fax: 239-765-0591

*We value your opinion and would ask that you take a minute to complete a survey regarding our Customer Service at the following link: <http://www.surveymonkey.com/s/6T2P9DC>*



Think Green. Please print this e-mail only if necessary.

*Please Note: Florida has very broad public records laws. Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications may be subject to public disclosure.*

**\*\*\*IMPORTANT MESSAGE\*\*\*** This message is intended for the use of the person or entity to whom it is addressed and may contain information that is privileged and confidential, the disclosure of which is governed by applicable law. If the reader of this email is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is **STRICTLY PROHIBITED**. If you have received this email by error, please notify us immediately and destroy the related message. This footnote also confirms that this email message has been swept for the presence of computer viruses, worms, hostile scripts and other email-borne network threats. **PLEASE NOTE:** Florida has a very broad public records law. Most written communications to or from government officials are public records available to the public and media upon request. Your email communications may be subject to public disclosure per Sec. 119 F.S.

EXHIBIT C

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 05-06

WHEREAS, SOB, Inc. as applicant and owner of Smokin' Oyster Brewery has requested a Special Exception for consumption on premises (4 COP) in the Downtown zoning District; and

WHEREAS, the subject property is located at 340 Old San Carlos Blvd., Ft. Myers Beach, Florida, the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00203.0010 and the legal description is as provided in Exhibit "A" which is attached hereto and incorporated herein by reference; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on February 8, 2005, and after giving full and complete consideration to the recommendations of the staff, the documents in the file, and the testimony of all interested persons, the LPA recommended approval of the Applicant's Special exception request with the following conditions:

1. The Special Exception is limited to on premises consumption of alcoholic beverages for a maximum of 89 seats, limited to a 4-COP beverage license to be used in conjunction with the Smokin' Oyster Brewery. A building floor plan is attached as Exhibit "B"
2. The approval of on premises consumption of alcoholic beverages for a 4-COP (Beer, Wine and Liquor) alcoholic beverage license is permitted in conjunction with a restaurant only. Sales of food must not fall below 50% of total sales and shall be in compliance with Section 34-1264(k) of the LDC.
3. Indoor music or entertainment is restricted to the hours of 11 AM to 11PM and live music shall be limited to non-amplified music until a noise buffer is installed that would adequately protect the residential area from noise impacts. That determination will be made by the Community Development Director and if the buffer is determined to be satisfactory then the restriction on non-amplified music may be lifted.
4. The indoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 8 AM and 12 AM, Monday through Sunday.
5. A full service menu must be available during hours of operation for consumption on premises.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested special exception.

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested modification:

1. The applicant demonstrated compliance with the Fort Myers Beach Comprehensive Plan.
2. The applicant demonstrated compliance with Chapter 34 of the Land Development Code of the Town of Fort Myers Beach.
3. The applicant demonstrated compliance with the other applicable town ordinances or codes.
4. The Special Exception, as conditioned, is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan..

5. That the Special Exception, as conditioned, meets all performance and locational standards set forth for the proposed use.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Special Exception is limited to on premises consumption of alcoholic beverages for a maximum of 89 seats, limited to a 4-COP beverage license to be used in conjunction with the Smokin' Oyster Brewery. A building floor plan is attached as Exhibit B
2. The approval of on premises consumption of alcoholic beverages for a 4-COP (Beer, Wine and Liquor) alcoholic beverage license is permitted only in conjunction with a restaurant. Sales of food must not fall below 50% of total sales in accordance with LDC Section 34-1264(k).
3. Music or entertainment is only allowed within the building and is prohibited between the hours of 11PM and 11AM. Live music must be limited to non-amplified music until a noise buffer is installed that, in the determination of the Community Development Director, adequately protects the residential area from noise impacts. If the buffer is determined to be satisfactory then the restriction on non-amplified music may be lifted.
4. The seating area will only be used in conjunction with the service of alcoholic beverages between the hours of 11 AM and Midnight, Monday through Thursday, between the hours of 11 AM and 1 AM, Friday and Saturday, and between the hours of 8 AM and 10 PM on Sunday.
5. A full service menu must be available during hours of operation for consumption on premises.

The foregoing resolution was adopted by the Fort Myers Beach Town Council

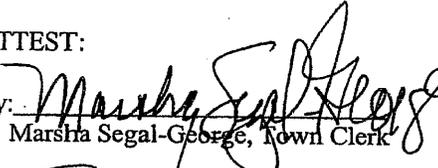
upon being put to a vote, the result was as follows:

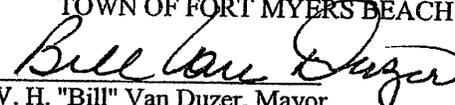
Howard Rynearson	YES
Don Massucco	YES
Bill Thomas	YES
W. H. "Bill" Van Duzer	YES
Garr Reynolds	NO

Adopted this 14th day of March, 2005.

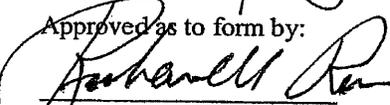
ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Marsha Segal-George, Town Clerk

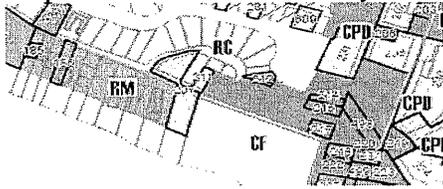
By:   
W. H. "Bill" Van Duzer, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

ORIGINAL

Town of Fort Myers Beach  
Department of Community Development



Zoning Division

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

- General Requirements
- DRI
- Planned Development
- Conventional Rezoning
- Special Exception
- Variance
- Appeal
- Other

Administrative Action

- General Requirements
- Planned Dev. Amendment
- Commercial Antenna
- Consumption on Premises
- Forced Relocation of a Business
- Interpretation of LDC
- Minimum Use Determination
- Setback Variance
- Other

29-2020  
(A)(2)

Name of Project: SMOKIN' OYSTER BREWERY  
 Applicant: WILLIAM FREEMAN  
 LeePA STRAP Number(s): 29-4623-W3-0023, 0010  
 Street address: 340 OLD SAN CARLOS BLVD. FMB, FL, 33931  
 Phone Number: 566-5227 E-mail:

**Specific requirements from which waiver is sought**

Section Number	Requirement
3A-2020	EXISTING DEVELOPMENTS
	OLD SAN CARLOS BLVD.

**Scope of project and reasons for request**

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

PRESENTLY SOB INC HAS NO PARKING
AND ITS BUSINESS DEPENDS ON
WALK IN PATRONS, THERE ARE
METERS ON OLD SAN CARLOS BLVD
ON BOTH SIDES OF THIS STREET.
THERE ARE THREE PAY TO PARK ZOTS
SURROUNDING THE PROPERTY WHERE
MOST OF SOB'S PATRONS ARE USING
BESIDES THE ADJACENT METERS.

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

\_\_\_\_\_  
Signature

8.30.12  
\_\_\_\_\_  
Date

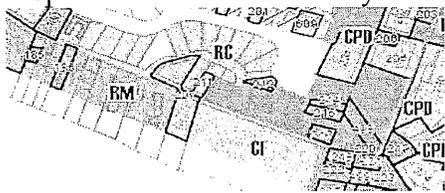
Director's Decision  Approved  Denied

Comments:


\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Town of Fort Myers Beach**  
 Department of Community Development



Zoning Division

**Application for Public Hearing**

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

Project Name: <i>SMOKIN' OYSTER BREWERY</i>
Authorized Applicant: <i>WILLIAM FREEMAN</i>
LeePA STRAP Number(s): <i>24-46-23-W3-00203,0010</i>

Current Property Status: <i>EXISTING RESTAURANT</i>
Current Zoning: <i>DOWN TOWN</i>
Future Land Use Map (FLUM) Category:
Platted Overlay? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no      FLUM Density Range:

Action Requested	Additional Form Required
<input checked="" type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

**Town of Fort Myers Beach**  
 Department of Community Development  
 2523 Estero Boulevard  
 Fort Myers Beach, FL 33931  
 (239) 765-0202

**PART I - General Information**

**A. Applicant:**

Name(s):	WILLIAM FREEMAN		
Address: Street:	340 OLD SAN CARLOS BLVD.		
	City:	State:	Zip Code:
	Ft. Myers Beach	FL.	33931
Phone:	239-560-5227		
Fax:			
E-mail address:			

**B. Relationship of applicant to property (check appropriate response)**

<input type="checkbox"/>	Owner (indicate form of ownership below)	
<input type="checkbox"/>	Individual (or husband/wife)	<input type="checkbox"/> Partnership
<input type="checkbox"/>	Land Trust	<input type="checkbox"/> Association
<input checked="" type="checkbox"/>	Corporation	<input type="checkbox"/> Condominium
<input type="checkbox"/>	Subdivision	<input type="checkbox"/> Timeshare Condo
<input type="checkbox"/>	Authorized representative (attach authorization(s) as Exhibit AA-1)	
<input type="checkbox"/>	Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)	
<input type="checkbox"/>	Town of Fort Myers Beach (Date of Authorization: _____)	

**C. Agent authorized to receive all correspondence:**

Name:	WILLIAM FREEMAN		
Mailing address: Street:	340 OLD SAN CARLOS BLVD.		
	City:	State:	Zip Code:
	Ft. Myers Beach	FL.	33931
Contact Person:	WILLIAM FREEMAN		
Phone:	239-560-5227	Fax:	
E-mail address:			

**D. Other agents:**

Name(s):	DAVID M. EASTERBROOK		
Mailing address: Street:	123 BAYVIEW AVE		
	City:	State:	Zip Code:
	Ft. Myers Beach	FL.	33931
Phone:	239-980-3091	Fax:	
E-mail address:	FIVE BEACH BUMS @ AOL.COM		

Use additional sheets if necessary, and attach to this page.

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

### PART II – Nature of Request

Requested Action (check applicable actions):

<input checked="" type="checkbox"/> Special Exception for: <i>ADDITIONAL OUT DOOR SEATING</i>
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

### PART III – Waivers

**Waivers from application submittal requirements:** Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director's approval(s) as Exhibit 3-1.

Code Section Number	Describe Item

### PART IV – Property Ownership

<input type="checkbox"/> <b>Single owner</b> (individual or husband and wife)
Name:
Address: Street:
City: State: Zip Code:
Phone: Fax:
E-mail Address:

<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

### PART V – Property Information

#### A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes:
Subdivision name: <u>BUSINESS CENTER</u>
Plat Book Number: <u>9</u> Page: <u>9</u> Unit:     Block: <u>3</u> Lot: <u>1</u>
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

#### B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida.
--

#### C. STRAP Number(s):

<u>24-46-23-W3-00203.0010</u>
-------------------------------

#### D Property Dimensions:

Area: <u>3200</u> square feet <u>.23</u> acres
Width along roadway: <u>40</u> feet     Depth: <u>80</u> feet

#### E. Property Street Address:

<u>340 OLD SAN CARLOS BLVD. FMB FL 33931</u>
--

**F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):**

FROM SKY BRIDGE RHT, ON ESTERO BLVD. RHT,  
 ON OLD SAN CARLOS BLVD. PROPERTY LOCATED  
 ON CORNER OF OLD SAN CARLOS AND THIRD STREET

Attach Area Location Map as Exhibit 5-3

**G. Property Restrictions (check applicable):**

- There are no deed restrictions or covenants on this property that affect this request.
- Restrictions and/or covenants are attached as Exhibit 5-4
- A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

**H. Surrounding property owners:**

- Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
- Attach two sets of mailing labels as Exhibit 5-7
- Attach a map showing the surrounding property owners as Exhibit 5-8

**I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)**

- |  |                                      |
|--|--------------------------------------|
| <input type="checkbox"/> Low Density           | <input type="checkbox"/> Marina      |
| <input type="checkbox"/> Mixed Residential     | <input type="checkbox"/> Recreation  |
| <input type="checkbox"/> Boulevard             | <input type="checkbox"/> Wetlands    |
| <input type="checkbox"/> Pedestrian Commercial | <input type="checkbox"/> Tidal Water |
- Is the property located within the "Platted Overlay" area on the Future Land Use Map?  Yes  No

**J. Zoning: (see official zoning map, as updated by subsequent actions)**

- |   |   |
|---|---|
| <input type="checkbox"/> RS (Residential Single-family) | <input type="checkbox"/> CM (Commercial Marina)         |
| <input type="checkbox"/> RC (Residential Conservation)  | <input type="checkbox"/> CO (Commercial Office)         |
| <input type="checkbox"/> RM (Residential Multifamily)   | <input type="checkbox"/> CB (Commercial Boulevard)      |
| <input type="checkbox"/> VILLAGE                        | <input type="checkbox"/> SANTINI                        |
| <input type="checkbox"/> SANTOS                         | <input checked="" type="checkbox"/> DOWNTOWN            |
| <input type="checkbox"/> IN (Institutional)             | <input type="checkbox"/> RPD (Residential Planned Dev.) |
| <input type="checkbox"/> CF (Community Facilities)      | <input type="checkbox"/> CPD (Commercial Planned Dev.)  |
| <input type="checkbox"/> CR (Commercial Resort)         | <input type="checkbox"/> EC (Environmentally Critical)  |
| <input type="checkbox"/> BB (Bay Beach)                 |   |

PART VI – Affidavit

Application Signed by a Corporation, Limited Liability Company (LLC),  
Limited Company (LC), Partnership, Limited Partnership, or Trustee

See attached explanatory notes for instructions

I, WILLIAM FREEMAN, as PRESIDENT/OWNER  
of SOB INC., swear or affirm under oath, that I am  
the owner or the authorized representative of the owner(s) of the property and  
that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data, or other supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action

SOB INC.  
Name of Entity (corporation, LLC, partnership, etc)  
PRESIDENT/OWNER  
Title of Signatory

William T. Freeman  
Signature  
WILLIAM T. FREEMAN  
Typed or Printed Name

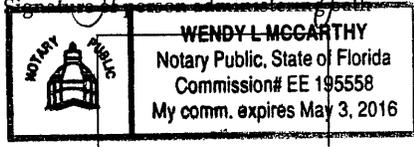
State of Florida  
County of Lee

The foregoing instrument was sworn to (or affirmed) and subscribed  
before me this Aug 23, 2012 by Wendy McCarthy

who is personally known to me or who has produced Known FLDL  
Type of identification

as identification Wendy McCarthy  
Signature of person administering oath

Wendy McCarthy  
Typed or Printed Name



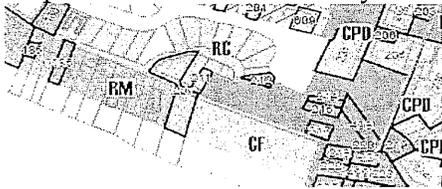
SEAL:



Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

Town of Fort Myers Beach  
Department of Community Development



Zoning Division

Supplement PH-A

Additional Required Information for a  
Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: <u>SMOKIN' OYSTER BREWERY</u>
Authorized Applicant: <u>WILLIAM FREEMAN</u>
LeePA STRAP Number(s): <u>24-46-23-W3-00203.0010</u>

Current Property Status: <u>EXISTING RESTAURANT</u>
Current Zoning: <u>DOWN TOWN</u>
Future Land Use Map (FLUM) Category: <u>N/A</u>
Platted Overlay? <u>yes</u> <input checked="" type="checkbox"/> <u>no</u> FLUM Density Range: <u>N/A</u>

Requested Action:

<input type="checkbox"/> Use of premises in the EC (Environmentally Critical) zoning district for:
<input checked="" type="checkbox"/> Use of premises in the <u>DOWN TOWN</u> zoning district for:
<u>EXISTING RESTAURANT REQUESTING</u>
<u>ADDITIONAL OUT DOOR SEATING, A COP</u>
<u>LICENSE IN PLACE WITH STATE OF FLORIDA</u>

PART I  
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

SOB INC. IS REQUESTING AN ADDITIONAL 24 SEATS OUTSIDE AND COVERED ON THIRD STREET. THIS AREA IS 364 SQ. FT. AND WILL REQUIRE A LEASE FROM THE TOWN OF FT. MYERS BEACH. SOB INC. IS ALSO REQUESTING 20 SEATS ON THE SIDE WALK AREA WHICH FRONTS OLD SAN CARLOS BLVD. THIS AREA IS 768 SQ. FT. AND WILL REQUIRE A LEASE FROM THE TOWN OF FT. MYERS BEACH. THE BUILDING AT THIS TIME IS APPROVED FOR 89 SEATS. THE SERVICE OF FOOD AND ALCOHOL ARE REQUESTED IN BOTH ABOVE MENTIONED AREAS. HOURS OF OPERATION 7AM - 2AM

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:

THE BEACH COMP PLAN ENCOURAGES OUT DOOR SEATING IN THE DOWN TOWN AREA ON OLD SAN CARLOS BLVD. SEC 34-67(8)(3). SOB INC. FEELS THIS PROPERTY MEETS SEC 34-88 SPECIAL EXCEPTIONS E - I.

(E) REQUEST IS CONSISTANT WITH THE BEACH COMP PLAN

(F) REQUEST MEETS THE PERFORMANCE AND LOCATIONAL STANDARDS SET FORTH IN THE COMP PLAN

(G) THERE WILL BE NO ENVIRONMENTAL IMPACT TO ADJACENT PROPERTIES.

(H) NO IMPACT

(I) THE REQUESTED USE UPHOLDS THE BEACH COMP PLAN.

Granting the requested Special Exception could impact surrounding properties as follows:

HOURS OF OPERATION ARE PRESENTLY FROM 10 AM TO 12 PM SOB INC REQUEST THE OPERATING HRS, FROM 7 AM TO 2 AM 7 DAYS A WEEK. THE COVERED PORCH AREA ROOF WATER WILL BE GUTTERED AND DIRECTED UNDER THE NEWLY CONSTRUCTED PORCH TO A CRUSHED SHELL PERVIOUS BASE PARALLEL TO 3 RD STREET.

PART 2  
Submittal Requirements

All applications for a special exception must submit fourteen (14) copies of this application form and all applicable exhibits.

**Required Items**

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.

**For New Communication Towers:**

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

# VARIANCE REPORT

8/22/2012

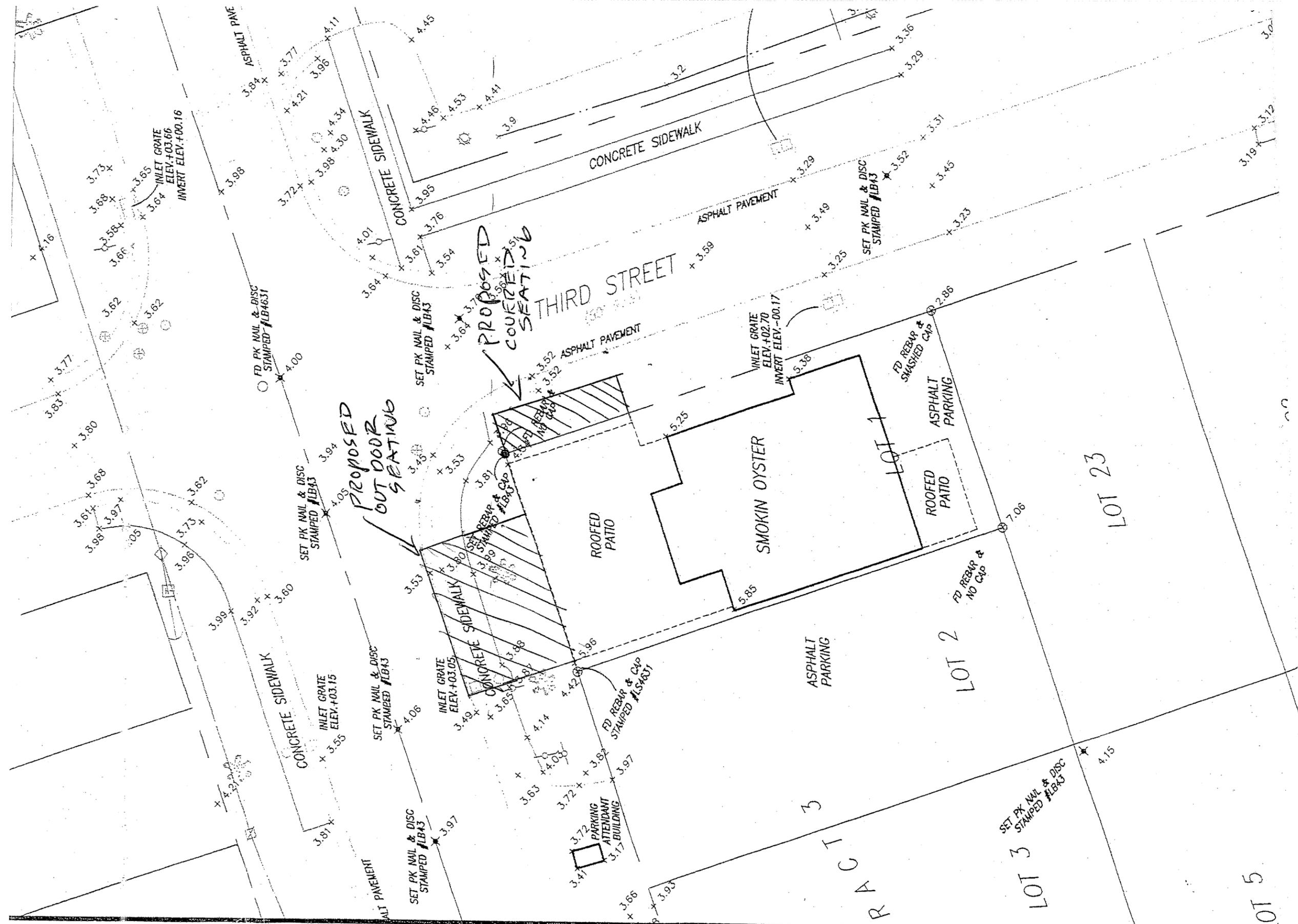
Subject Parcels : 1 Affected Parcels : 111 Buffer Distance : 500 ft



24-46-23-W3-00203.0010



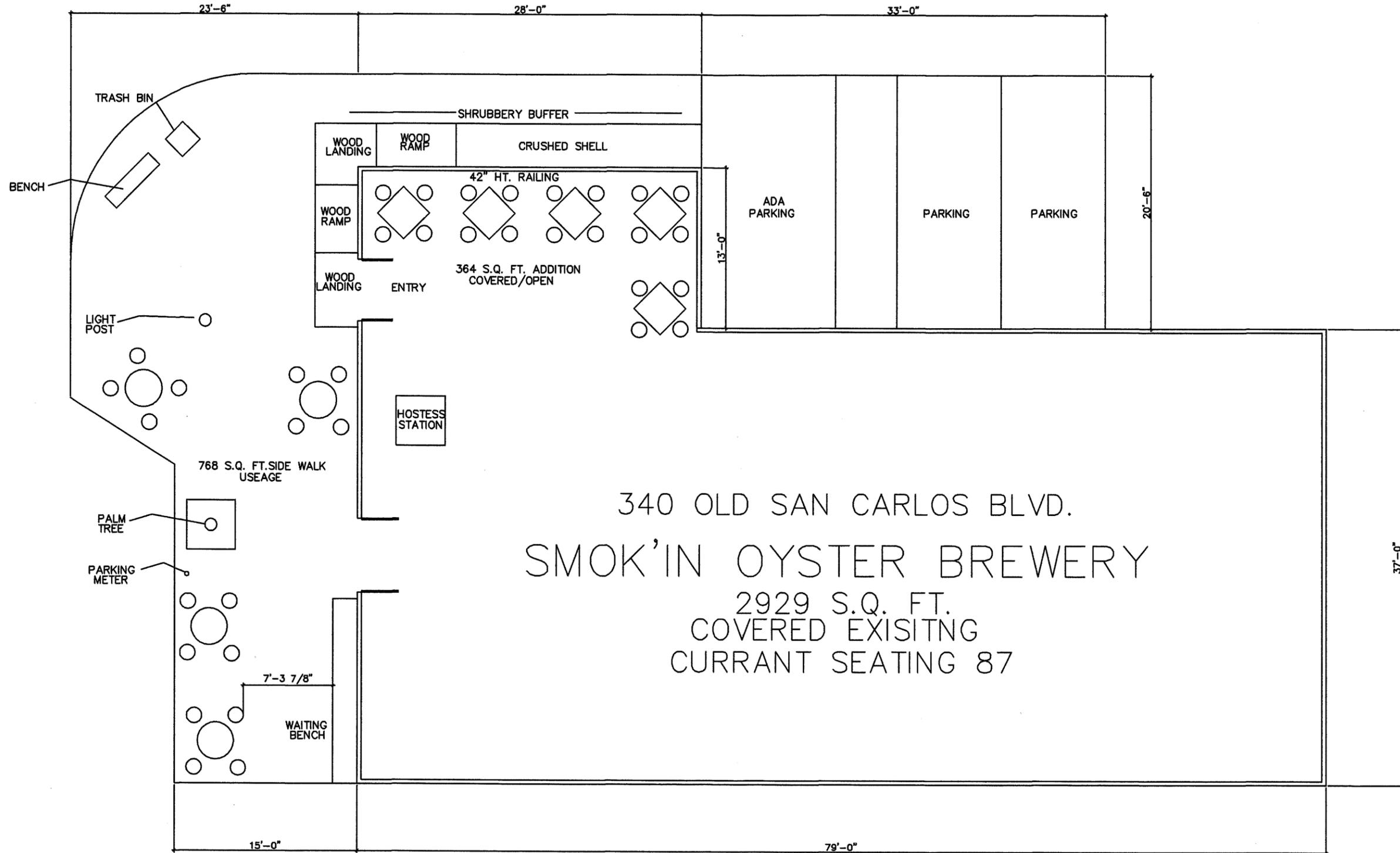
OldSanCarlosBlvd\Streetscape\04\Rev04\325004C04.dwg 06/11/2004 08:51:03 AM EDT



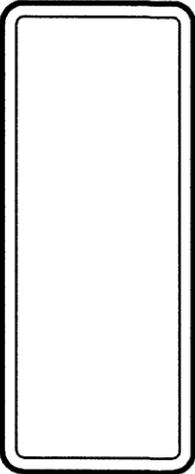
ORIGINAL

3 RD. STREET

OLD SAN CARLOS BLVD.



REVISIONS



340 OLD SAN CARLOS BLVD.  
**DECK EXTENSION**  
 FORT MYERS BEACH, FLORIDA. 33931

drawn by DME
checked by JK
date 8/30/12
scale
job no. JOB

SHEET NO.

**ORIGINAL**



OLD SAN CARLOS BLVD.

**ORIGINAL**