

1. Requested Motion:

Meeting Date: Dec. 3, 2012

For case SEZ2012-0001 Smokin' Oyster Brewery, approve the requested special exception in the Downtown zoning district to expand outdoor seating with consumption-on-premises into the Town right-of-way (Old San Carlos Boulevard and Third Street) immediately adjacent to the subject property, located at 340 Old San Carlos Blvd, with the approval subject to 8 conditions as recommended by Staff and the Local Planning Agency (LPA)

Why the action is necessary:

Outdoor consumption-on-premises (COP) when located within 500' of a school, park, dwelling unit or another establishment with outdoor COP requires approval via the special exception process.

What the action accomplishes:

Allows the applicant to provide and serve alcoholic beverages in the outdoor seating and waiting area for patrons of the Smokin' Oyster Brewery.

2. Agenda:

- Consent
 Administrative
 Public Hearing

3. Requirement/Purpose:

- Resolution
 Ordinance
 Other

4. Submitter of Information:

- Council
 Town Staff
 Town Attorney

5. Background:

Case: SEZ2012-0001 Smokin' Oyster Brewery Special Exception

Applicant Bill Freeman, owner of the subject property and the restaurant Smokin' Oyster Brewery, is requesting to expand the restaurant seating area, including the 4COP license area, onto the Town's right-of-way on Old San Carlos Boulevard and Third Street.

The request is a special exception as it is looking to expand alcohol consumption outdoors.

The LPA held a public hearing for the request at their October 9, 2012 meeting. The applicant and Staff each presented the case along with a recommendation for approval. LPA had a question and answer period and discussion involving conditions for approval. The LPA voted 7-0 to approve the request with the conditions as recommended by Staff and adding two further conditions of approval addressing their concerns over clear pathways for pedestrians and delineation of COP area.

Attachments:

- Draft Town Council Resolution
- LPA Resolution 2012-016
- LPA minutes from October 9, 2012 meeting
- Staff Report
- Application

6. Alternative Action:

1. Deny the requested special exception
2. Approve the special exception subject to alternative conditions

7. Management Recommendations:

Approve the requested special exception subject to 8 conditions of approval as recommended by the LPA.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 12- 26
SEZ2012-0001 - 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.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on December 3, 2012, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2012-016, the 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 TOWN COUNCIL 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, LPA Resolution 2012-008 and the standards for granting special exceptions, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES/DENIES** 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 the approval subject to the following conditions:

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 A.*
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 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 a Limited Review Development Order and any other permits determined to be necessary at the time of permitting*
7. *A minimum clear pathway, 5' in width, shall be kept clear at all times for pedestrian traffic.*
8. *Pavers and/or paint are to be used to delineate the area where tables are to be located along Old San Carlos Boulevard.*

FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, Town Council makes the following findings and reaches 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 Town Council upon a motion by Councilmember _____ and seconded by Councilmember _____ and upon being put to a vote, the result was as follows:

Bob Raymond, Mayor	AYE/NAY	Alan Mandel, Vice Mayor	AYE/NAY
Jo List	AYE/NAY	Joe Kosinski	AYE/NAY
Dan Andre	AYE/NAY		

DULY PASSED AND ADOPTED THIS **3rd** day of DECEMBER, 2012.

By: _____
 Bob Raymond, Mayor

Approved as to legal sufficiency:

By: _____
 Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
 Michelle Mayher
Town Clerk

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** 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 A.*

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*
7. *A minimum clear pathway of 5' in width be kept clear at all times for a pedestrian throughway.*
8. *Pavers and/or paint are to be used to delineate the area where tables are to be located along Old San Carlos Boulevard.*

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** exist that make the requested approval, as conditioned, appropriate:
2. The requested special exception, as conditioned, **is** 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** all performance and locational standards set forth for the proposed use.
4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and 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:

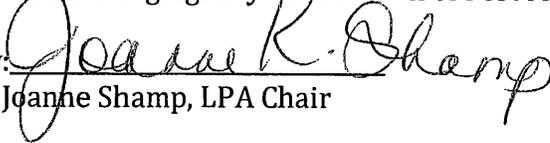
6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

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

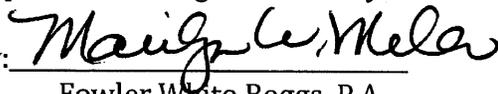
Joanne Shamp, Chair	AYE	Dan Andre, Member	AYE
Al Durrett, Member	AYE	John Kakatsch, Member	AYE
Jane Plummer, Member	AYE	Alan Smith, Member	AYE
Hank Zuba, Member	AYE		

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:

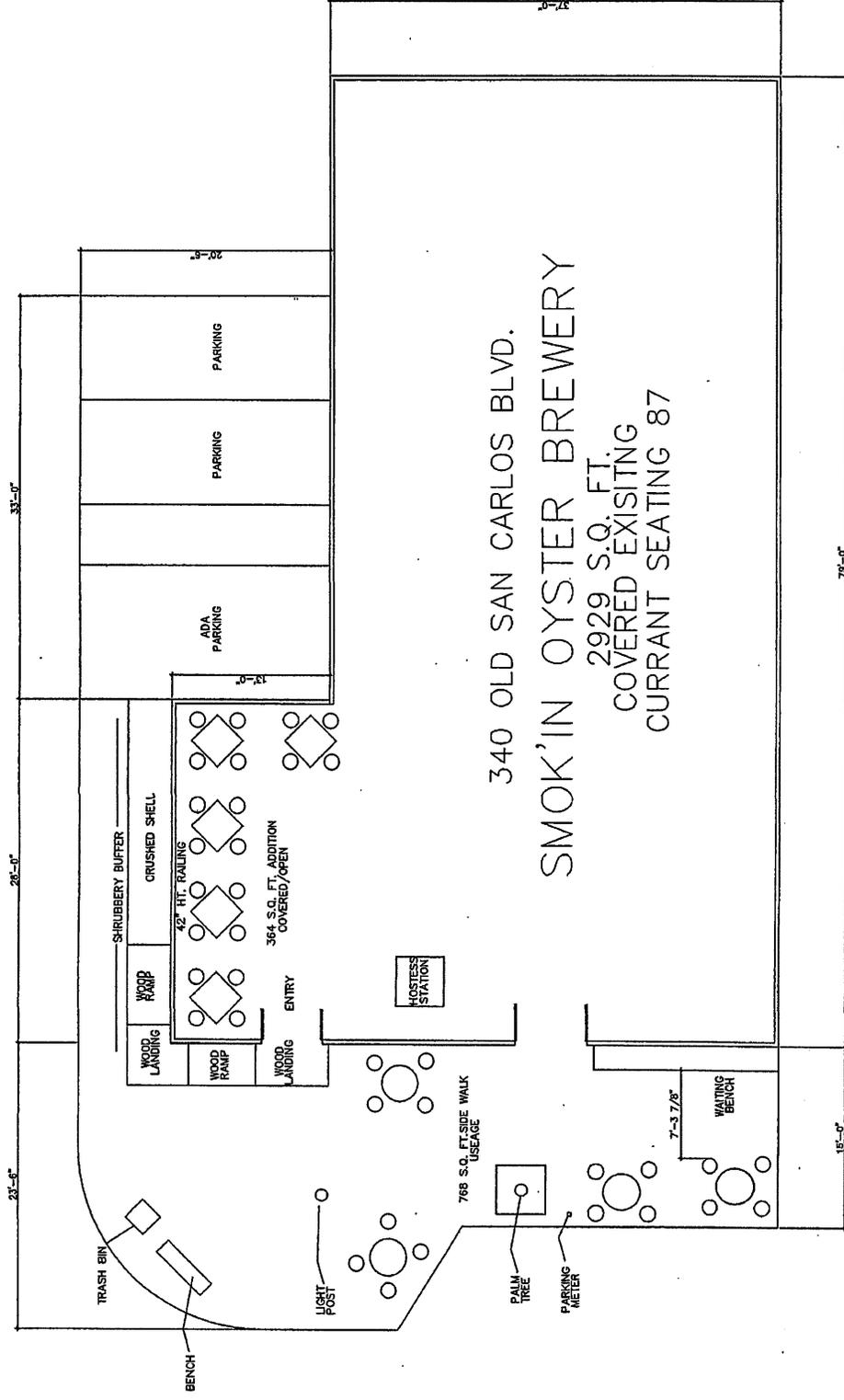
By: 
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

EXHIBIT A

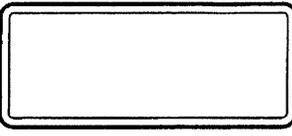
3 RD. STREET



OLD SAN CARLOS BLVD.

340 OLD SAN CARLOS BLVD.
 SMOK'IN OYSTER BREWERY
 2929 S.O. FT.
 COVERED EXISTING
 CURRANT SEATING 87

REVISIONS

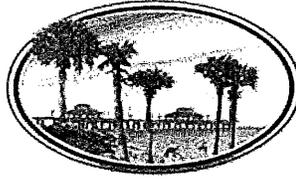


340 OLD SAN CARLOS BLVD.
 DECK EXTENSION
 FORT MYERS BEACH, FLORIDA, 33911

DESIGNED BY
CHECKED BY
DATE
PROJECT NO.
SHEET NO.

SHEET NO.

ORIGINAL



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
October 9, 2012

I. CALL TO ORDER

Meeting was called to order at 9:02 a.m. by Chair Shamp; other members present:

Dan Andre
Al Durrett
John Kakatsch
Jane Plummer
Alan Smith
Hank Zuba

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Chapman, Zoning Coordinator
Patti Evans, Parks & Recreation Director

II. PLEDGE OF ALLEGIANCE – Mr. Zuba

III. INVOCATION – Mr. Zuba

IV. MINUTES

A. Minutes of September 11, 2012

MOTION: Ms. Plummer moved to approve the September 11, 2012 minutes as presented; second by Ms. Andre.

VOTE: Motion approved 6-0; Mr. Kakatsch was absent from the Chambers.

Chair Shamp noted that at last month's meeting it was announced that there would be the election for Chair and Vice Chair at today's meeting; however, Town Council deferred appointments to the Boards and Committees to the October 15, 2012 Council meeting; therefore, the LPA would decide on the positions of Chair and Vice Chair at the November 13, 2012 LPA meeting.

MOTION: Mr. Smith moved to adjourn the LPA and reconvene as the HPB; second by Mr. Durrett.

VOTE: Motion approved, 7-0.

**Adjourn as LPA and Reconvened as Historic Preservation Board
9:07 A.M.**

A. Mound House Historic Registration

Parks & Recreation Director Evans reported that last year the Friends of the Mound House began the process of listing the Mound House on the National Register of Historic Places. She announced staff anticipated the home renovation work to be completed by December 31, 2012 and then the remaining exhibits and interior would be completed during 2013. She reviewed the hard work of the many volunteers and supporters during the past ten years on this project and their desire to move the project forward to obtain historic designation. She explained the Town's Code made it the Board's responsibility to review and approve moving forward with the nomination. She described how the National Register of Historic Places was our Nation's official list of cultural resources worthy of preservation, and more than 82,000 properties encompassing 1.4 million individual resources in nearly every county in the nation have been listed in the National Register. She briefly reviewed the qualifying criteria and explained the significance of such a designation. She requested the support of the Historic Preservation Board for the Mound House nomination to the National Register of Historic Places.

Mr. Kakatsch questioned the limited parking at the Mound House facility; and the status of the property owned by the Town on Connecticut Street and the possible use of the Baptist Church property as it related to being used for visitor parking.

Parks & Recreation Director Evans reported there were only nine parking spaces on-site and two were handicapped spaces. She noted that according to the home's square footage that the nine spaces were adequate for the site. She explained the property on Connecticut Street was an unimproved parking area owned by the Town.

Mr. Kakatsch questioned if the Town's unimproved parking area was designated as such by a sign.

Parks & Recreation Director Evans responded in the negative; and added that she would work with the Community Development Director on that matter. She reported that the Town was working with the Church to establish a permissive use agreement for parking on church property prior to the start of 'season'. She mentioned that staff was investigating the use of a golf cart that would transport six people by staff and/or volunteers back and forth between the overflow parking and the Mound House.

Chair Shamp questioned if staff would apply for separate designations for the house and the archeological site or would it be a package designation of the home and the site together.

Parks & Recreation Director Evans stated they were getting ready the home only; and they would need to speak with their State and National contact who would advise if the designation should be separate or together. She reported the request today was only for the home.

Discussion ensued regarding the separate or combined designation recommendation.

Mr. Zuba asked if the historic designation would impact insurance costs and/or fire code issues.

Parks & Recreation Director Evans reported the designation would not impact those areas; and noted that as part of the renovation a fire suppression system was added on the first floor, and she would investigate and report back as to any impact on the insurance.

Discussion ensued regarding the costs associated with the Mound House since the beginning; the cost of the current renovation work; and the grants funding the acquisition and renovation of the subject property.

MOTION: Ms. Shamp moved that in accordance with the Town of Fort Myers Beach Land Development Code Section 22-74(5) that the Historic Preservation Board approved entering into the National Register of Historic Places designation process for the structure and site of the Fort Myers Beach Mound House; second by Mr. Zuba.

Ms. Shamp noted the designation was well supported by the Comprehensive Plan and congratulated on their hard work on this matter.

VOTE: Motion carried, 7-0.

B. HDD2012-0001 'The Big M' Roof Sign

Leslee Chapman, Zoning Coordinator for the Town of Fort Myers Beach, reported that staff was requesting a continuance of the Big "M" Roof Sign historic designation. She reviewed that at the August 14, 2012 LPA the Applicant was directed to apply for the designation for a Historically Significant Sign per LDC Section 30-57 for the roof sign on one of their storage barns. She noted staff's request for their further review to evaluate the historic merits of the roof sign. She explained that the historic designation request, which was separate from the sign variance application, would come before the HPB and final determination would go before Town Council. She reviewed the complexity of the request should the HPB not recommend the historic values of the roof sign which would alter the application for the sign variance. She reported that the Applicant was in agreement with staff's request for a continuance.

MOTION: Ms. Shamp moved to approve staff's recommendation for continuance of HDD2012-0001, The Big 'M' Roof Sign, to the date certain of the HPB Meeting on December 11, 2012 and materials shall be due to staff by November 13, 2012; second by Mr. Durrett.

VOTE: Motion carried, 7-0.

Chair Plummer announced that the Historical Advisory Committee met on September 25, 2012 at which time the HAC Committee discussed properties for possible historical significance instead of historical designation. She reviewed the criteria determined by the Committee for historical significance (i.e. age, prior residents of the property, the number of 'firsts', architecture/architect, landmarks, etc.). She noted the HPB had \$12,000 in their budget for such designations.

Mr. Kakatsch stated it was his understanding that currently there were designation signs available that could include the wording for the historical significance. He suggested a designation of historical significance at least once a month.

Discussion ensued regarding the differences between the historical designation and significance/recognition signs; the HPB's budget; the Vista Sign Program; the type of material for the signage; and the possibility of using QR Codes and filming people and sites as it pertained to historical significance.

Community Development Director Fluegel suggested the topic may be a topic for a Joint Workshop with Town Council.

Discussion was held concerning the existence of documents to substantiate historical designation/significance; and the potential criteria, basis or support for a historical recognition.

Zoning Coordinator Chapman asked if the HPB had any suggestions for the research historical significance sign application.

Chair Plummer responded in the affirmative; and noted a form was being created for such requests.

Ms. Shamp asked if there was a need for the HPB to approve the form being created by the HAC.

Community Development Director Fluegel noted the Land Development Code, Chapter 22, as it pertained to historic designation, and pointed out there was not process for historic recognition. He suggested the collective thoughts of the HAC be given to the HPB and then allow for staff, along with the Town Attorney, to work on the matter.

Discussion ensued regarding the HAC's list of properties for potential historical recognition and the historical properties listed in the Town's Comprehensive Plan.

MOTION: Mr. Kakatsch moved to adjourn the HPB and reconvene as the LPA; second by Mr. Zuba.

VOTE: Motion carried, 7-0.

**Adjourn as Historic Preservation Board and Reconvene as LPA
9:41 A.M.**

V. PUBLIC HEARING

A. VAR2011-0007 Moss Marine

Chair Shamp opened the hearing at 9:42 a.m.

Zoning Coordinator Chapman presented VAR2011-0007 Moss Marine on behalf of the Town of Fort Myers Beach. She reported that at the August 14, 2012 LPA Meeting the subject application was continued to today. She noted that staff had provided in the agenda packet a memo and information on the progress of the application. She explained that staff had presented two other variances to Town Council which had also been heard at the August LPA Meeting and Council had moved to continue both of those hearings pending additional information from the applicants.

Community Development Director Fluegel offered his interpretation of Council's deliberation on the minimum variance necessary for a sign variance and the legal threshold so as not to compromise the sign code.

Ms. Plummer asked if the signs depicted in the packet exhibit were the signs necessary for insurance purposes.

Zoning Coordinator Chapman responded in the affirmative; noting that some signs were necessary for employees and some were for customers. She reviewed some of the progress staff was making on the variance request and discussed Exhibit H which was provided by the Applicant. She added that the element missing was the Applicant's justification for why they wanted to retain each sign; and explained how staff and the Applicant were working to determine the minimum variance necessary.

Community Development Director Fluegel reported that staff had requested the Applicant to provide a site plan that would index the signage throughout the site.

Chair Shamp reported she visited the subject site and met with Town staff regarding the application and reviewed the requirements for a variance application according to the Town's Land Development Code (Sections 30-54 and 34-87) and requested documentation for any signs necessary due to insurance, their fuel contract, or FWC or DEP requirements. She offered suggestions such as but not limited to the removal of three non-compliant signs and to replace them as window or awning signs. She stated she supported staff's request for a continuance to December 11th.

Discussion ensued regarding whether or not there was actual progress with the Applicant regarding the sign variance application; how signs classified as 'informational' were not included in the signage square footage calculation; issues related to sign ordinance deal as it pertained to marinas; the sign

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ordinance as it related to the right-of-way, the channel, and the Intercoastal Waterway; whether or not it might be necessary for an amendment to the sign code to address marinas and waterways and the need for direction from Town Council; and if the subject variance should be continued further to the February 2013 meeting.

The Applicant noted from the audience that they were agreeable to continuing the variance request to February 12, 2013.

Mr. Andre noted the upcoming variance application for Matanzas Inn as it pertained to waterfront signage.

Zoning Coordinator Chapman pointed out that application was a CPD; however, the application did not discuss signage and a date had not been set for it to go before Town Council.

MOTION: Mr. Durrett moved to continue VAR2011-0007, Moss Marina, to a date certain of February 13, 2013 LPA Meeting; second by Ms. Plummer.

VOTE: Motion approved; 7-0.

Chair Shamp closed the hearing at 10:03 a.m.

Recessed at 10:04 a.m. – Reconvened at 10:10 a.m.

B. SEZ2012-0001 Smokin' Oyster Brewery

Chair Shamp opened the hearing at 10:10 a.m.

Chair Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman entered the Affidavit of Publication into the record.

Chair Shamp asked if any LPA Member had ex-parte communication regarding this item. Mr. Kakatsch – site visit; Mr. Durrett – none; Mr. Zuba – none; Mr. Smith: - site visit and spoke with the owner; Mr. Andre – site visit; Ms. Plummer – site visit and spoke with owner; Chair Shamp – site visit.

Zoning Coordinator Chapman presented comments for SEZ2012-0001, Smokin' Oyster Brewery on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the subject property and described the location of the site. She reported the request was for a special exception in the Downtown zoning district with a Future Land Use of Pedestrian Commercial to allow the expansion of outdoor seating, with consumption-on-premises, into the Town right-of-way (Old San Carlos Boulevard and Third Street) immediately adjacent to the building located on the subject property. She displayed a proposed site plan and noted the outdoor seating and consumption. She stated that approval of such a request would need to be conditioned with a lease agreement and a liability agreement with the Town

Town of Fort Myers Beach – Local Planning Agency

October 9, 2012

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which was standard process if any private citizens use the Town's right-of-way for their gain. She discussed the Applicant's request for additional outdoor seating for waiting patrons to enjoy an alcoholic beverage; and requesting a waiver of parking requirements for parking spaces generated by additional outdoor seating (12 required on-site spaces). She reviewed the supporting regulations:

- **Section 34-88: Function** – Town Council shall hear and decide all applications for special exceptions permitted by the district use regulations. **Considerations** – in reaching its decision, the Town Council shall consider the following when applicable.
- **Section 34-88(2)(a)** - whether there exist changed or changing conditions [that] make approval of the request appropriate. Staff in agreement.
- **Section 34-88(2)(e)** – whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan. Staff in agreement.
- **Section 34-88(2)(f)** – whether the request meets or exceeds all performance and locational standards set forth for the proposed use. Staff in agreement request is appropriate due the location; applicant to meet all building code standards.
- **Section 34-88(2)(g)** – whether the request will protect, conserve, or preserve environmentally critical areas and natural resources. Staff reported the request would have no negative effects on the environmentally critical areas and natural resources.
- **Section 34-88(2)(h)** – whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property. Staff reported the request was compatible and appropriate within its neighborhood; and noted the sidewalk would have a clearance of 7.5 feet for patrons and the entire sidewalk would not be blocked.
- **Section 34-88(2)(i)** – 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. Staff noted any use of alcohol on the subject property would be subject to Section 34-671 and 34-1264 and the existing business approvals on the subject property.

She stated that staff recommended approval with conditions of the requested special exception to expand outdoor seating with consumption-on-premises into the Town right-of-way as follows:

1. Consumption on premises is limited to the building located on the subject property at 340 Old San Carlos Boulevard 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 a.m. to 2:00 a.m., daily for inside the building and the additional deck area. Hours of operation for consumption-on-premises for Old San Carlos Boulevard sidewalk are and shall be limited to 10:00 a.m. to 12:00 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.

Discussion was held concerning the existing bicycle rack and relocating it to a more suitable area; and ADA requirements as it pertained to the layout and the outdoor furniture.

David Easterbrook, Easterbrook Consulting, described the proposed changes to the outdoor area layout and furniture; and an outdoor bench to alleviate patron congestion.

Discussion continued regarding the location of the trash bin and the bench; the LPA's ability to add conditions to approval as they see fit; the location of the outdoor tables; and softening the site with landscaping, the shrubbery buffer along the ADA ramp, the use of potted plants.

Ms. Plummer asked if the total number of seats would be 113.

Mr. Easterbrook responded in the affirmative and stated that the Smokin' Oyster House had 87 seats and were requesting the additional seating on the outside.

Ms. Plummer suggested outdoor pavers designating where the outside seating area would be located; and would prefer not to see a fence; and that the tables on the San Carlos Boulevard side be limited to a maximum of three in order to keep the space open.

Discussion was held regarding if there were any plans for a sidewalk on Third Street; hours of operation; parking spaces; the public walkway, edge of payment, and setback as it related to the subject building; and the precedent set by Zushi Zushi as it pertained to the Smokin' Oyster Brewery.

Chair Shamp discussed her belief that the Comp Plan supported the pedestrian-oriented outdoor dining request; however, she noted there were parts of the request that concerned her because it appeared to be a precedent. She distributed copies of her concepts and discussed the following:

1. The request for lease of public right-of-way for the sale and consumption of alcohol outside Times Square was not currently permitted and would be a precedent. It would signal a change in policy and she explained why she felt would be appropriate for Town Council to determine the change.
2. The open container law as it pertained to the application; public safety issues as it related to design concepts to the following: a) the need for a sidewalk for people to walk, b) the location of back-out parking spaces on Third Street, c) congestion associated with 4-seater tables, d) the new location for the trash receptacle and bench and the function of a bump-out in the street design at the subject location, e) the need for protection of patrons sitting at the outdoor tables, and f) types of outdoor tables and the use of umbrellas and potential locations on the subject site.

Zoning Coordinator Chapman noted that the survey included in the agenda packet was from when the Town redeveloped Old San Carlos Boulevard and did appear to indicate a sidewalk on the other side of Third Street from the subject property; however, it may be covered by sand or something else at the present time.

Discussion ensued regarding the concrete sidewalk noted on the survey; the proposed extension of the deck; the open container law in Times Square and the subject sidewalk being consumption-on-premise; safety concerns regarding the proposed location of the bench; and pavers to delineate the tabletop area.

Mr. Easterbrook reported there was a new survey that was just completed on the subject property which he believed would clear up some of the concerns discussed (i.e. concrete curbs, paver walks, tables on pavers).

Discussion ensued regarding outdoor dining with or without alcohol and the vision of the Comp Plan as it pertained to walkability.

Zoning Coordinator Chapman distributed copies of the new survey of the subject property.

Discussion was held concerning whether to separate leasing the public right-of-way for expanding the COP in a motion.

LPA Attorney Miller pointed out that the LPA did not have the final authority and that both streets (Old San Carlos Boulevard and Third Street) were in the public right-of-way.

Zoning Coordinator Chapman explained that if COP were not involved there would be no need for a special exception and the request could have been handled administratively.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Mr. Andre moved on FMBSEZ2012-0001 to recommend approval with staff's recommendations as they set forth; second by Ms. Plummer.

Ms. Plummer requested the Motion Maker to consider the following additional conditions: 7) two 2-seater tables along San Carlos Boulevard as maximum; 8) pavers that would delineate the line of seating for the tables; and 9) a total of 123 seats being inside/outside.

Chair Champ noted there were bricks along one section and requested clarification.

Ms. Plummer explained she wanted to seek pavers at any place there would be tables to define the area.

Zoning Coordinator Chapman pointed out the areas suggested for pavers was within the domain of Public Works and might cause a problem.

Ms. Plummer stated that indicating the area by using paint would be sufficient.

Motion maker stated he would agree to the amendment to say “pavers and/or paint”.

Discussion was held concerning the proposed condition #7.

Motion maker stated he would not agree with proposed condition #7 and that four was sufficient.

Discussion was held regarding the condition #7 and Ms. Plummer removed the condition from her requested amendment and clarified that condition #8 would be “pavers and/or paint” and she also removed condition #9.

Motion maker agreed to include “pavers and/or paint that would delineate the line of seating for the tables” as condition #7.

LPA Attorney Miller suggested consideration for language regarding ‘a clear pathway’ for the public (i.e. a minimum width of five feet).

Motion maker agreed to include “a minimum clear pathway of five feet in width to be kept clear at all times for pedestrians”.

Discussion was held concerning the motion.

Motion maker withdrew the motion; second agreed.

MOTION: Mr. Andre recommends that he Town Council approve 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 Boulevard and Third Street) immediately adjacent to the restaurant located on the applicant’s property, with any approval subject to stated conditions #1-6 and the added conditions #7-8 [A minimum clear pathway of five feet in width to be kept clear at all times for pedestrians; and Pavers and/or paint to delineate where tables are to be located along Old San Carlos Boulevard] and the Recommended Findings and Conclusions:

1. Changed or changing conditions do exist that make the requested approval, as conditioned, appropriate.
2. The requested special exception, as conditioned, is 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 all performance and locational standards set forth for the proposed use.
4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and 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.

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.

Second by Ms. Plummer.

Chair Shamp discussed her views on the proposed motion and that the LPA thoroughly reviewed the issue at hand.

VOTE: Motion approved; 7-0.

Chair Shamp closed the Public Hearing at 11:31 a.m.

LPA Attorney Miller advised that the LPA adjourn and convene as the HPB to reconsider the motion to continue HDD2012-0001.

MOTION: Mr. Kakatsch moved to adjourn the LPA and reconvene as the HPB; second by Mr. Andre.

VOTE: Motion carried, 7-0.

**Adjourn as LPA and Reconvened as Historic Preservation Board
11:32 A.M.**

A. HDD2012-0001 'The Big M' Roof Sign

MOTION: Ms. Shamp moved to reconsider the motion of our action for the continuance of HDD2012-0001; second by Mr. Zuba.

VOTE: Motion carried, 7-0.

MOTION: Ms. Shamp moved to approve staff's recommendation for continuance of HDD2012-0001, The Big 'M' Roof Sign, to the date certain of the HPB Meeting on February 12, 2013; second by Mr. Zuba.

VOTE: Motion carried, 7-0.

MOTION: Mr. Kakatsch moved to adjourn the HPB and reconvene as the LPA; second by Mr. Smith.

VOTE: Motion carried, 7-0.

**Adjourn as Historic Preservation Board and Reconvene as LPA
11:35 A.M.**

Discussion was held concerning a Joint Workshop with Town Council; and consensus was to attempt to reschedule the Joint Workshop after the LPA's next regular meeting and to place on the agenda: 1) HPB, plaques and budget; 2) LPA post-disaster recovery ordinance; and 3) signage along the waterway for restaurants and marinas.

Mr. Kakatsch recommended that Chuck's Last Stop receive some type of recognition for the outstanding improvements completed on the property.

Discussion was held concerning a 'beautification award' and Zoning Coordinator Chapman stated she would investigate the award and report back to the LPA at their November meeting; and Chair Shamp offered to contact Mr. Van Duzer for information on the award.

VI. LPA MEMBER ITEMS AND REPORTS

Mr. Durrett – no items or report.

Mr. Zuba – questioned the status of the RFQ.

Community Development Director Fluegel reported there was a meeting with the Selection Advisory Committee and it was reported the Town received seven proposals from land use consultant firms; and would be shortlisted to five firms who will be interviewed and ranked for presentation to Town Council. He outlined staff's intention as to what would happen once a firm was selected which would include but not be limited to the Seafarer's property and the CRA.

Ms. Plummer – requested to add to the topic of playground equipment at Lynn Hall Park for the Joint Workshop with Town Council.

Mr. Kakatsch – requested an updated on the three grey buildings on Estero Boulevard.

Community Development Director Fluegel reported the lien mitigation request would go before Town Council next Monday; and that a prospective purchaser had entered into a contract with a bank. He discussed the lien reduction request, staff's recommendation for a reduction in connection with other property issues such as but not limited to demolition.

Mr. Smith – no items or report.

Mr. Andre – questioned the cost to lease Town rights-of-ways.

Zoning Coordinator Chapman stated her belief that cost to lease the Town rights-of-way was part of budget discussions and fee schedules every year.

Ms. Shamp – questioned the magistrate hearing on the turtle issue.

LPA Attorney Miller reported the Magistrate had the parties work out that Town staff and the rental agent would put together an educational program for realtors on turtle lighting. Also, the rental agent and the property owner are making a joint donation to Turtle Time of \$500; the Magistrate did make a finding of a violation for the subject property; and they would pay prosecutorial costs.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items or report.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – offered an update on the Action Item List:

- Pink Shell Beach Inn sign variance to Council on October 15th
- Matanzas Inn on hold as staff works with the Applicant
- Minimum Use Determination for Seagrape was put on hold at the request of the Applicant, and staff was working with the Applicant on the issues. Discussion was held concerning a potential text amendment, the planned development rezoning process, and density as it pertained to the subject MUD.
- International Property Maintenance Code shall come back before the LPA next month
- Street performers ordinance next month
- Noise ordinance/entertainment ordinance; staff has begun work on a comprehensive assessment of what existed and legal interpretations
- FEMA Community Rating System review was submitted earlier this month
- Evaluation and Appraisal Report (EAR); staff would utilize the land use consultant once selected on this matter which had a due date of April 2016
- Post-disaster reconstruction and recovery
- Ebb Tide Rezoning – Lee County had found the application sufficient and it was moving forward to a Hearing Examiner on November 14, 2012; the Town utilized a traffic consultant who found concern with the project; staff was taking this to Council for direction next week; staff would recommend that the project require a Traffic Impact Study and Traffic Mitigation Plan. Discussion was held concerning features of the Ebb Tide Project.

IX. LPA ACTION ITEM LIST REVIEW

Zoning Coordinator Chapman reported the Smokin' Oyster Brewery Special Exception was to be determined.

Mr. Andre stated he would represent the LPA at the Council Meeting when the special exception was scheduled as long as it was an evening meeting.

Mr. Smith confirmed he would represent the LPA at the October 15th Council Meeting as it related to the Beach Shell Inn.

X. ITEMS FOR NEXT MONTH'S AGENDA

Chair Shamp reported the next LPA meeting was November 13, 2012; reorganization of the LPA would appear on the agenda next month and the list of potential agenda items for the Joint Workshop.

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Mr. Zuba, seconded by Mr. Kakatsch to adjourn.

VOTE: Motion approved, 7-0.

Meeting adjourned at 12:03 p.m.

Adopted 11/13/12 With/Without changes. Motion by Kakatsch ; Second by Plummer

Vote: 5-0



Signature

End of document.



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:

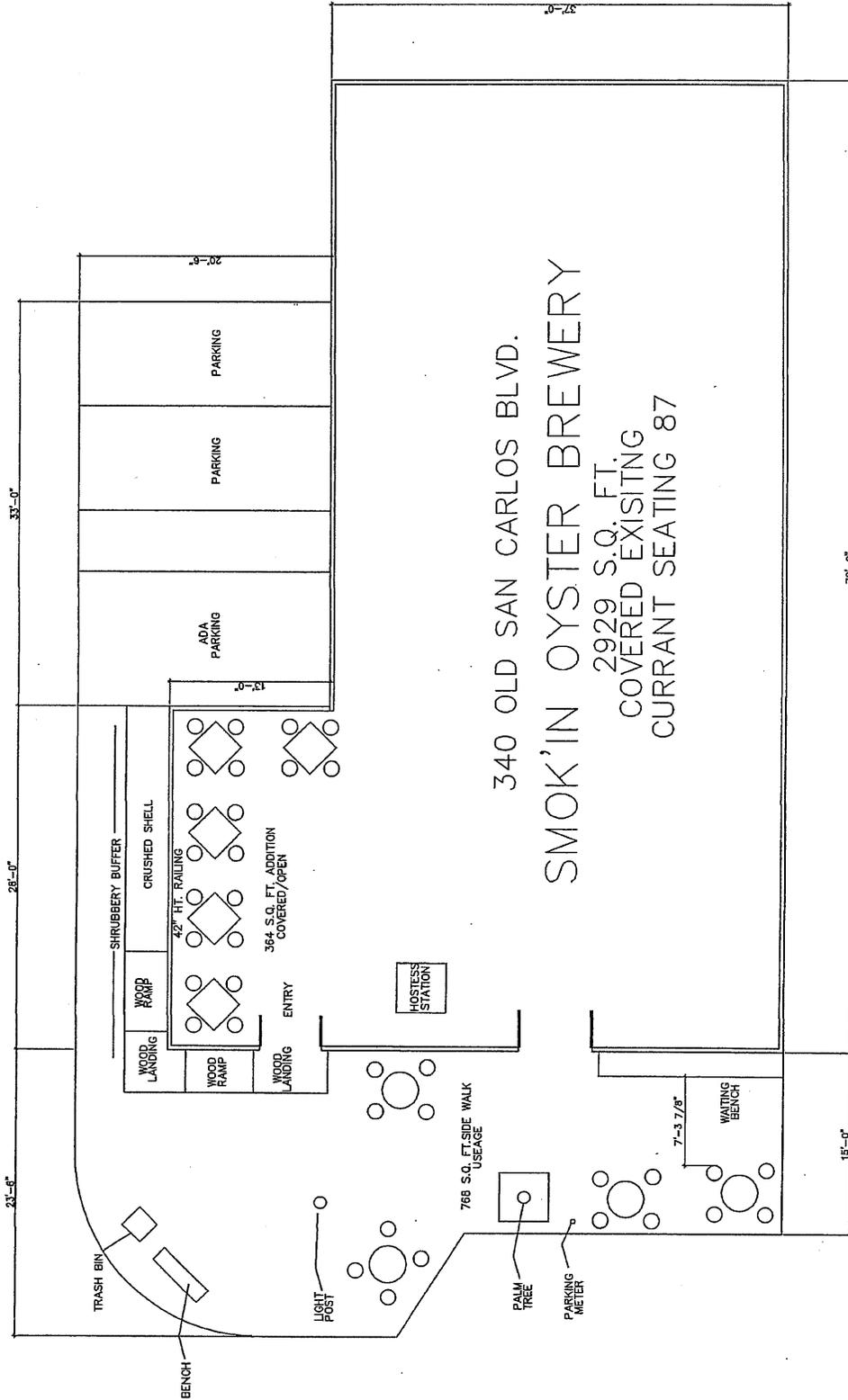
Exhibit A – Site Plan

Exhibit B – Email from Lt. Ciolino

Exhibit C – Resolution 05-06

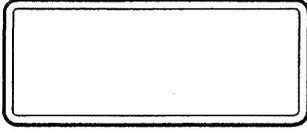
EXHIBIT A

3 RD. STREET



OLD SAN CARLOS BLVD.

REVISIONS



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

DESIGNED BY
DRAWN BY
CHECKED BY
DATE
SCALE
PROJECT NO.
DATE

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. Freeman's 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. Freeman's 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 front 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.

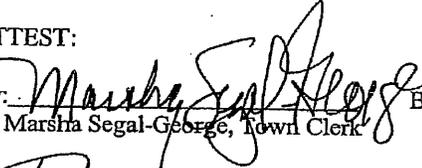
The foregoing resolution was adopted by the Fort Myers Beach Town Council

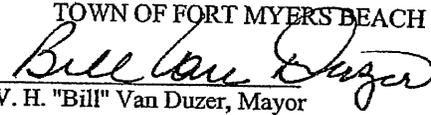
upon being put to a vote, the result was as follows:

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

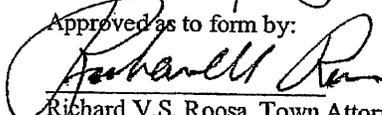
Adopted this 14th day of March, 2005.

ATTEST:

By: 
Marsha Segal-George, Town Clerk

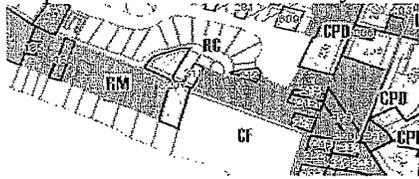
TOWN OF FORT MYERS BEACH
By: 
W. H. "Bill" Van Duzer, Mayor

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
(1)(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

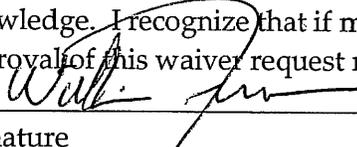
Section Number	Requirement
3A-2020	EXISTING DEVELOPMENTS
	OLD SAN CARLOS BLVD.

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.


8.30.12

Signature _____ Date _____

Director's Decision Approved Denied

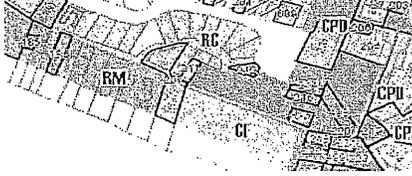
Comments:

Signature _____ Date _____

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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-W3-00263,0610</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

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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

Case # _____
Planner _____

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Date of Sufficiency/Completeness _____

<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>
--

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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):

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> 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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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

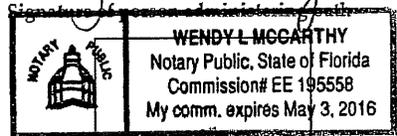
William T. Freeman
Signature
WILLIAM T. FREEMAN
Typed or Printed Name

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
Date Name of person under oath or affirmation
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 _____

**EXHIBIT 4-1
DISCLOSURE OF INTEREST FORM**

STRAP# 24-46-23-W3-00203, 0010

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage

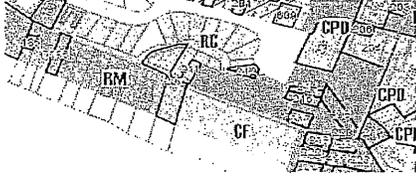
2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address, and office	Percentage
<u>WILLIAM FREEMAN</u> <u>PRESIDENT</u>	<u>33 1/3</u>
<u>WILLIAM FREEMAN</u> <u>SECRETARY</u>	<u>33 1/3</u>
<u>WILLIAM FREEMAN</u> <u>TREASURER</u>	<u>33 1/3</u>

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>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 34-678b(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 LO-CATIONAL 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.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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 POREM 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

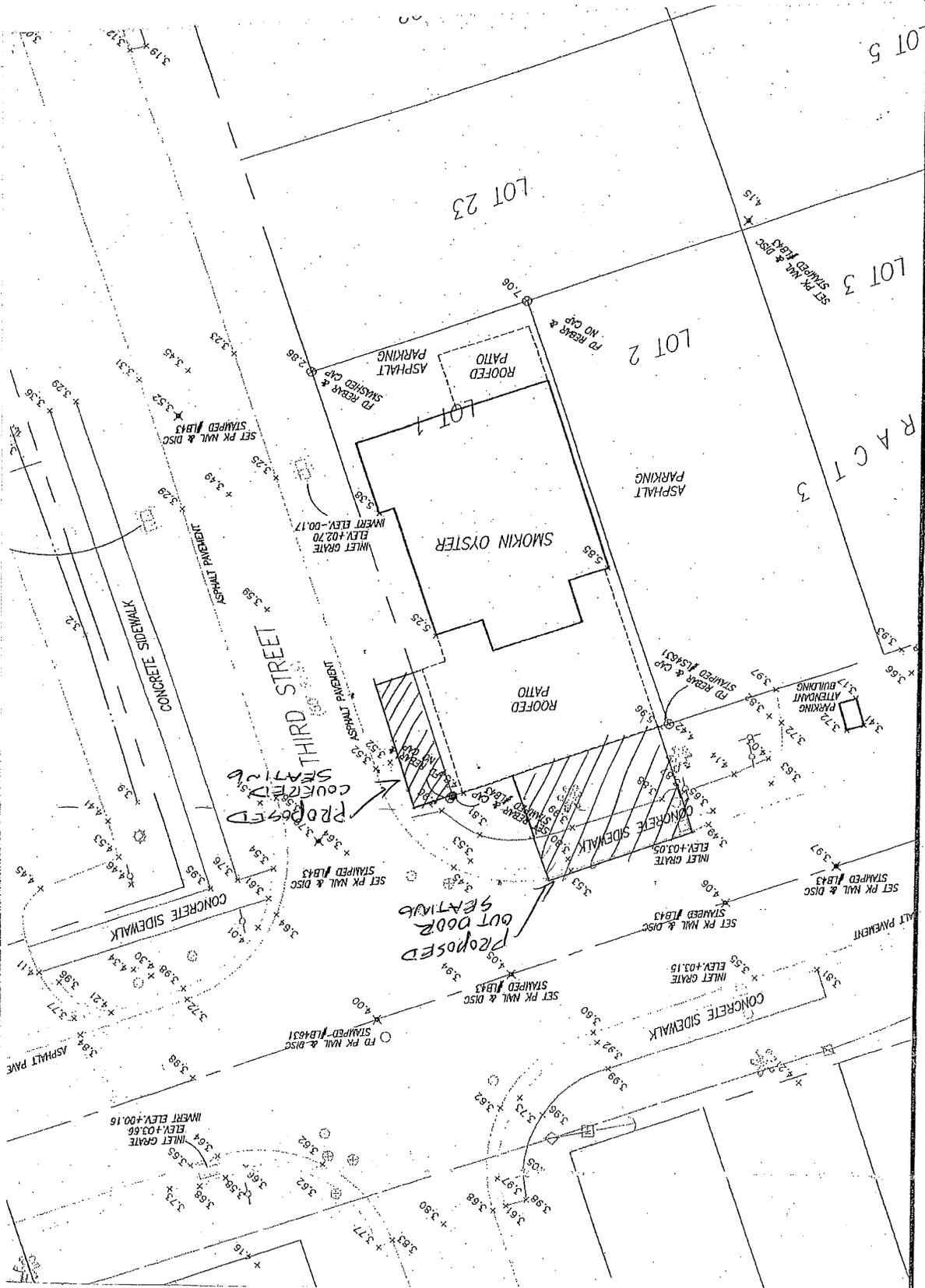


24-46-23-W3-00203.0010

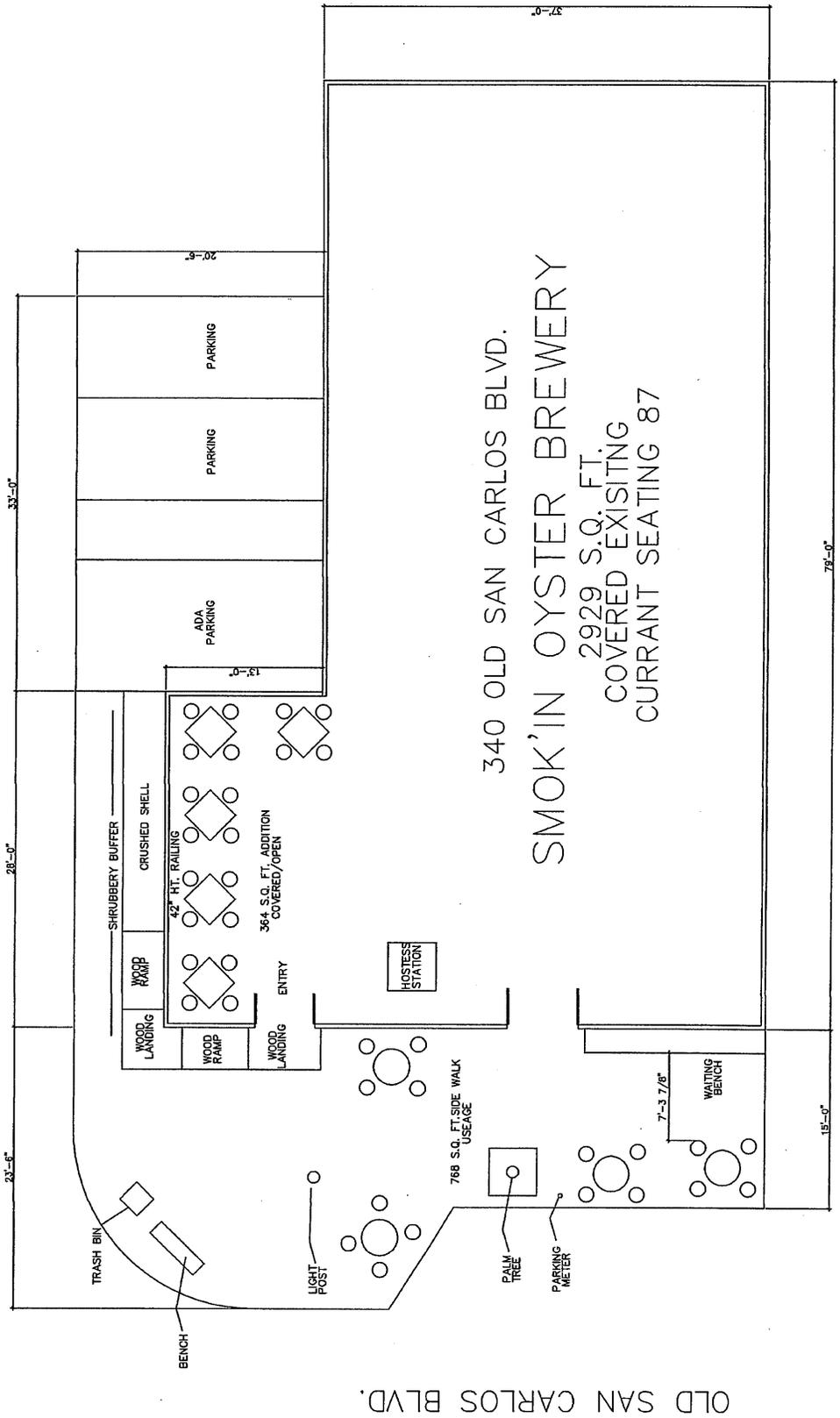
260 130 0 260 Feet

ORIGINAL

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



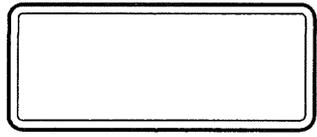
3 RD. STREET



OLD SAN CARLOS BLVD.

340 OLD SAN CARLOS BLVD.
 SMOK'IN OYSTER BREWERY
 2929 S.Q. FT.
 COVERED EXISTING
 CURRANT SEATING 87

REVISIONS

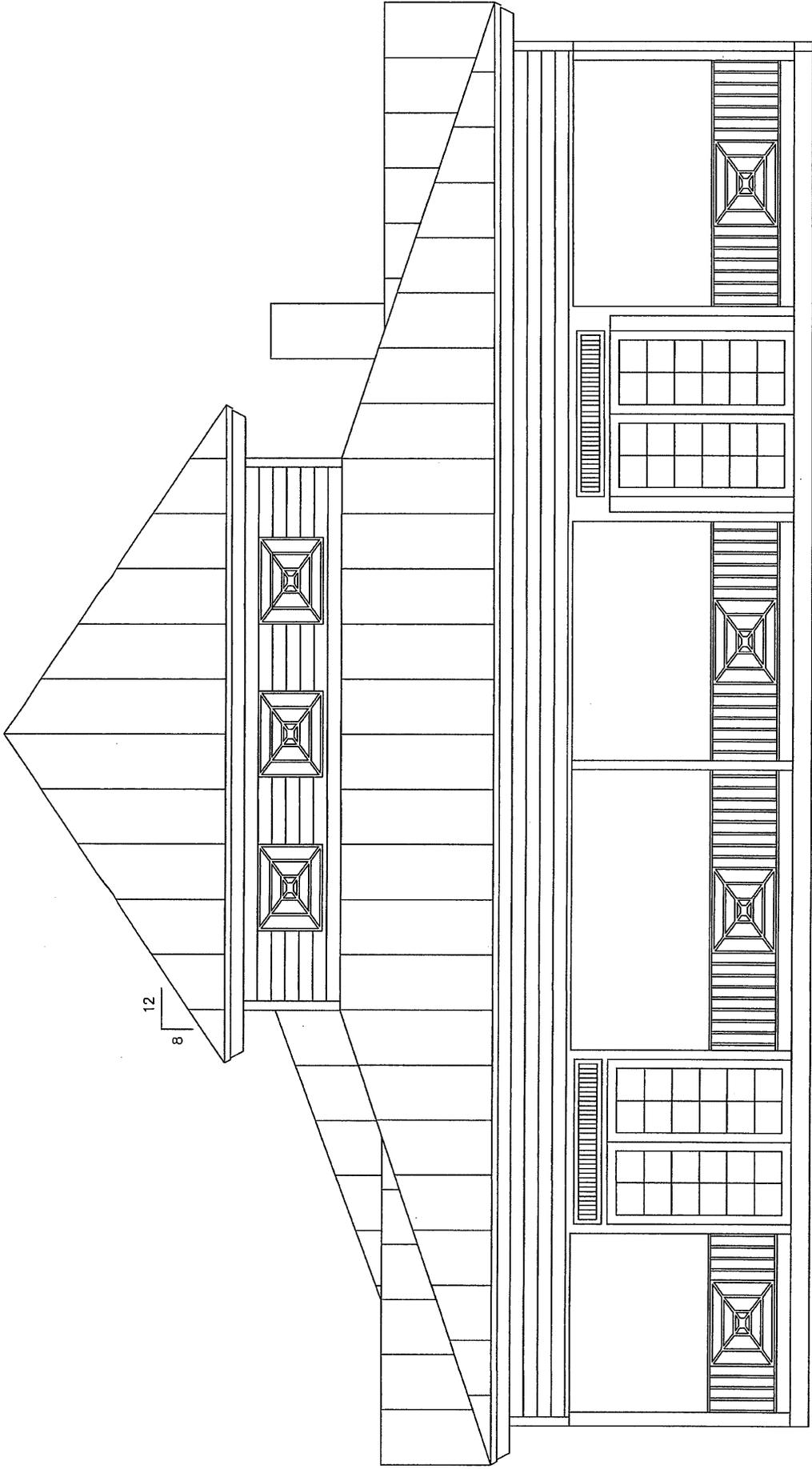


340 OLD SAN CARLOS BLVD.
 DECK EXTENTION
 FORT MYERS BEACH, FLORIDA 33931

Drawn by
 Checked by
 Date
 Scale

SHEET NO.

ORIGINAL



OLD SAN CARLOS BLVD. ORIGINAL