

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:

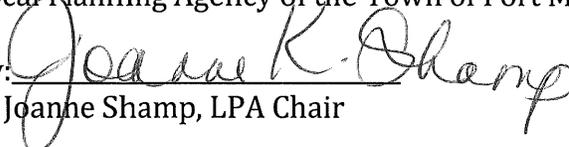
6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

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:

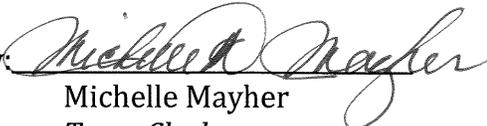
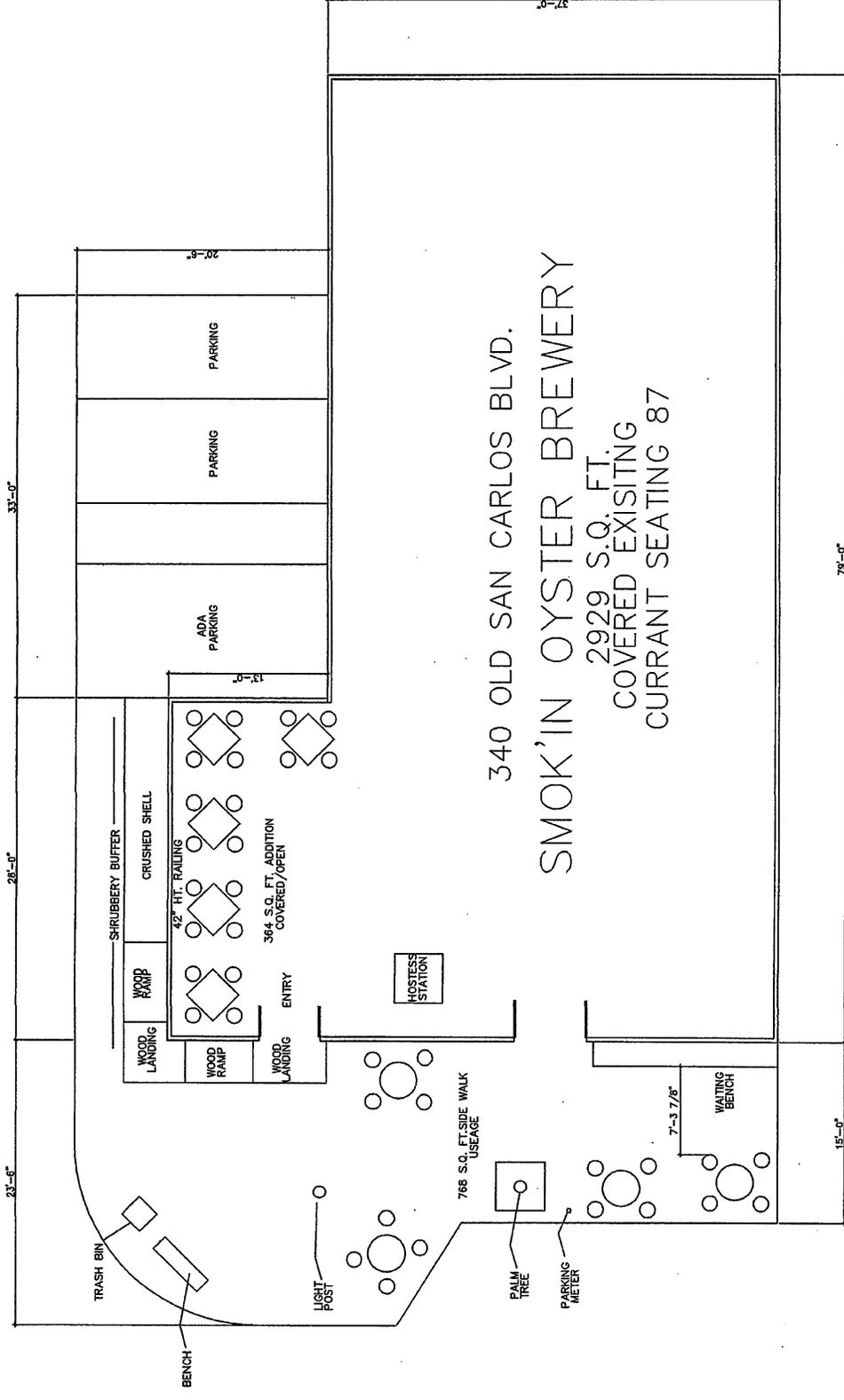
By:   
Michelle Mayher  
Town Clerk

EXHIBIT A

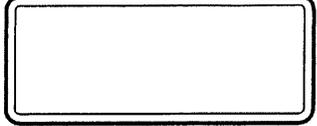
3 RD. STREET



OLD SAN CARLOS BLVD.

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

REVISIONS

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

DESIGNED BY	
CHECKED BY	
DATE	
SCALE	
PROJECT	
SHEET NO.	

SHEET NO.

ORIGINAL