

1. Requested Motion:

Meeting Date: June 3, 2013

Motion to APPROVE/DENY the request for a special exception (SEZ2013-0001) in the DOWNTOWN zoning district to expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck at the front of the existing building on the subject property with conditions 1-9 as contained in the draft Resolution 13-09.

Why the action is necessary:

The Land Development Code requires all special exceptions to be approved by Town Council.

What the action accomplishes:

Approves a special exception use for the subject property.

2. Agenda:

- Consent
- Administrative
- Public Hearing

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other

4. Submitter of Information:

- Council
- Town Staff – Comm. Dev.
- Town Attorney

5. Background:

Case: SEZ2013-0001 The Beached Whale special exception

Applicant Dave Esterbrook, agent for the owner Marty Harrity, is requesting a special exception to serve alcoholic beverages outdoors at the restaurant known as The Beached Whale located at 1249 Estero Boulevard.

The restaurant is a popular dining establishment and is surrounded on all sides by parking spaces. The applicant desires to expand their serving capacity by removing the back-out parking spaces along the Estero Boulevard frontage and constructing a new 636± square foot deck where those parking spaces are currently located. Additionally, they are requesting approval for limited hours of non-amplified outdoor music.

The LPA held a public hearing on the request at their April 9, 2013 meeting. Staff presented its case along with a recommendation for approval with conditions (see LPA resolution conditions 1-4). LPA had a question and answer period with the applicant, heard public comment, and asked questions of Staff. Ultimately, the LPA voted 6-0 (Member Steele had an excused absence) to recommend approval with six (6) additional conditions.

Attachments:

- Tab A - Draft Council Resolution 13-09
- Tab B - LPA Resolution 2013-003
- Tab C - Draft LPA minutes from the April 9, 2013 (anticipated adoption at the June LPA meeting)
- Tab D - Staff memo and additional applicant materials
- Tab E - Staff Report
- Tab F - Application

6. Alternative Action:

7. Management Recommendations:

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 13- 09
SEZ2013-0001 - The Beached Whale

WHEREAS, applicant Marty Harrity has requested approval of a Special Exception in the DOWNTOWN zoning district to expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck at the front of the existing building on the subject property; and

WHEREAS, the subject property is located at 1249 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060H.0300 and the legal description of the subject property is VENETIAN GARDENS BLK H PB 6 PG 70 LOTS 30 31+32+ PT LT 29; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 9, 2013; 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 June 3, 2013, at which time the Town Council gave full and complete consideration to the request of the Applicant, LPA Resolution 2013-003, 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 30-88.

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 and the standards for granting variances, 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 expand the area where outdoor consumption on premises is permitted to include ____ square feet of a proposed new deck at the front of the existing building on the subject property subject to the following conditions:

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RECOMMENDED CONDITIONS OF APPROVAL:

1. *Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and both the existing upper and proposed new lower outdoor decks depicted on the attached Exhibit C.*
2. *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 7:00 AM to 11:00 PM daily for the outdoor deck areas.*
3. *Non-amplified acoustic music and outdoor televisions shall be limited to from 11:00 AM to 11:00 PM daily.*
4. *Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(e).*
5. *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.*
6. *No required parking spaces, including required ADA spaces, may extend into the Town or Lee County right-of-way.*
7. *The applicant shall provide an impervious retention area under the proposed outdoor deck to assist with stormwater retention.*
8. *The outdoor seating on the proposed outdoor deck will at all times comply with current building, fire and life safety codes for tables and chairs.*
9. *The sliding doors providing access from the existing restaurant to the proposed outdoor deck must remain closed, aside from regular ingress and egress functions, when indoor music is being played.*

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **do/do not** exist that make the requested approval, as conditioned, appropriate;
2. The requested special exception, as conditioned, **is/is not** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, **will/will not** be compatible with existing or planned uses and **will/will not** cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, **will/will not** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember _____ and seconded by Councilmember _____, and upon being put to a vote, the result was as follows:

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

DULY PASSED AND ADOPTED THIS 3rd day of **JUNE, 2013**.

By: _____
Alan Mandel, Mayor

Approved as to legal sufficiency:

ATTEST:

By: _____
Fowler, White, Boggs
LPA Attorney

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2013- 003
SEZ2013-0001 The Beached Whale

B

WHEREAS, applicant Marty Harrity has requested approval of a Special Exception in the DOWNTOWN zoning district to expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck at the front of the existing building on the subject property; and

WHEREAS, the subject property is located at 1249 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060H.0300 and the legal description of the subject property is VENETIAN GARDENS BLK H PB 6 PG 70 LOTS 30 31+32+ PT LT 29; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 9, 2013; 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 expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck at the front of the existing building on the subject property subject to the following conditions:

RECOMMENDED CONDITIONS OF APPROVAL:

1. *Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and both the existing upper and proposed new lower outdoor decks depicted on the attached Exhibit C.*
2. *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 7:00 AM to 11:00 PM daily for the outdoor deck areas.*
3. *Non-amplified acoustic music and outdoor televisions shall be limited to from 11:00 AM to 11:00 PM daily.*
4. *Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(e).*

5. *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.*
6. *No required parking spaces, including required ADA spaces, may extend into the Town or Lee County right-of-way.*
7. *The applicant shall provide an impervious retention area under the proposed outdoor deck to assist with stormwater retention.*
8. *The outdoor seating on the proposed outdoor deck will at all times comply with current building, fire and life safety codes for tables and chairs.*
9. *The applicant will apply for a permit with Lee County to paint or otherwise delineate the sidewalk area running along the Estero Boulevard frontage of the subject property.*
10. *The sliding doors providing access from the existing restaurant to the proposed outdoor deck must remain closed, aside from regular ingress and egress functions when indoor music is being played.*

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.

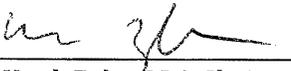
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The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Shamp** and seconded by LPA Member **Kakatsch**, and upon being put to a vote, the result was as follows:

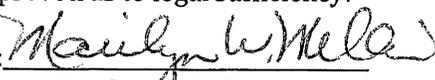
Hank Zuba, Chair	AYE	Joanne Shamp, Vice Chair	AYE
Al Durrett, Member	AYE	John Kakatsch, Member	AYE
Jane Plummer, Member	AYE	Alan Smith, Member	AYE
Jim Steele	excused absence		

DULY PASSED AND ADOPTED THIS **9th** day of APRIL 2013.

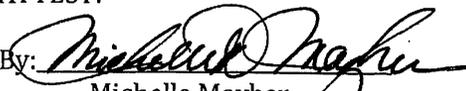
Local Planning Agency of the Town of Fort Myers Beach

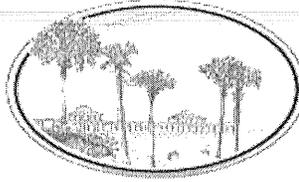
By: 
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

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

ATTEST:

By: 
Michelle Mayher
Town Clerk



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

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, April 9, 2013

I. CALL TO ORDER

Meeting was called to order at 9:05 a.m. by Chair Zuba; other members present:

Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
Alan Smith
James H. Steele – excused.
Hank Zuba

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director – ETA at 9:15 a.m.
Leslee Chapman, Zoning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of March 12, 2013

MOTION: Ms. Shamp moved to approve the Minutes for March 12, 2013 as presented; second by Mr. Smith.

VOTE: Motion approved, 6-0.

The Local Planning Agency passed on good wishes to Zoning Coordinator Chapman on her upcoming nuptials.

V. PUBLIC HEARINGS

A. SEZ2013-0001, The Beached Whale

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for SEZ2013-0001, Special Exception for the Beached Whale, on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 1249 Estero Boulevard. She reviewed the variance request for a special exception in the Downtown Zoning District to expand the area where outdoor consumption on premises was permitted to include 636± square feet of a proposed new deck at the front of the existing building on the subject property (Future Land Use – Pedestrian Commercial). She displayed renderings of the proposed site plan, existing back-out parking, proposed plan and elevation; and discussed the Applicant's request to remove six back-out parking spaces, relocate ADA parking spaces, a new outdoor deck with permanent roof cover, adjust operating hours for the deck area from 7:00 a.m. to 2:00 a.m., and offer acoustic music on the deck area from 11:00 a.m. to 10:00 p.m. (Monday through Friday). She noted there would be a roof extension over most of the proposed deck; there were no plans to extend the upper level deck; and that the request was for an extension for the ground-level deck. She utilized a PowerPoint presentation to review staff's analysis of the Application according to the supporting regulations:

- Section 34-88 Special Exceptions – Function: The Town Council shall hear and decide all applications for special exceptions permitted by the district use. *Considerations* - In reaching its decision, the Town Council shall consider the following whenever applicable:
 - Section 34-88(2)(a):
Whether there exist changed or changing conditions [that] make approval of the request appropriate.
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, that area can support a more intense variety of uses that are appealing and attractive to residents and visitors alike. *The Applicant's request was consistent with this policy.*
With increasing congestion and traffic delays on Estero Boulevard, and the delay in Lee county making improvements to that right-of-way, the Comprehensive Plan encouraged any opportunity to remove traffic obstacles and improve traffic flow, and should be encouraged and supported. *The Applicant's request to remove six back-out parking spaces was consistent with this policy.*
 - Section 34-88(2)(e):
Whether the request was consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

The subject property was located in what the Comprehensive Plan termed 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”.

In both the Community Design Element and the Future Land Use Element, the Comp Plan described 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. *The Applicant’s request was consistent with this vision.*

○ Section 34-88(2)(a):

Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The very nature of this application indicated that the requested use of consumption on premises was not a use allowable by right on the subject property. It was however, a use permitted by special exception (Section 34-126(a)(2)).

The Applicant’s request was 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 was encouraged by the Comp Plan and the Land Development Code. *Approval of the Applicant’s request, along with conditions requiring appropriate building permits, would ensure that all performance standards were met.*

○ Section 34-88(2)(g):

Whether the request would protect, conserve, or preserve environmentally critical areas and natural resources.

The Applicant’s request would have no negative effects on the environmentally critical areas and natural resources of Fort Myers Beach because the subject property was located in an established commercial district, landward of the Coastal Construction Line(s) and far from environmentally critical areas and sensitive natural resources. *Approval of the Applicant’s request should be conditioned to require that any outdoor lights met with the Sea Turtle lighting requirements.*

○ Section 34-88(2)(h):

Whether the request would 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 the site were 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 possessed a vibrant mix of uses, and as such, staff felt the Applicant’s request was compatible and appropriate within its neighborhood.*

○ Section 34-88(2)(i):

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

The consumption on premises of alcoholic beverages on the subject property would be required to comply with the applicable standards in the Fort Myers Beach LDC including,

but not limited to Section 34-1264. *Staff recommended finding that he 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.*

She reported that staff recommended **approval with conditions** of the requested special exception in the Downtown Zoning District to expand the area where outdoor consumption on premises was permitted to include 636± square feet of proposed new deck at the front of the existing building on the subject property with the following conditions:

1. Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and both the existing upper, and proposed new lower outdoor decks depicted on the attached 'Exhibit C'.
2. 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 both inside the building and the outdoor deck area.
3. Acoustic music shall be limited to from 11:00 a.m. to 10:00 p.m., Monday through Friday.
4. Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(3).
5. 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.

She reported that prior to the Public Hearing she submitted to the LPA an additional exhibit, 'Exhibit E', which was a full survey of the subject property, and a copy of a letter from the adjacent property owner, Mr. Ganim, listing his concerns and objection to the special exception.

Ms. Shamp noted how the application should be reviewed with the public's safety in mind (i.e. traffic, pedestrian and bicycle safety, stormwater management, and noise). She questioned stormwater management as it related to underneath the deck.

Zoning Coordinator Chapman indicated 'Exhibit D' was a memo from the Public Works Director who recommended that stormwater management be dealt with under the proposed deck with a type of 'holding facility'. She added that issue would be reviewed and the required specifics would be addressed under the Limited Review Development Order process; and that the LPA could add a specific condition on stormwater management.

Ms. Shamp discussed the memo from the Public Works Director as it pertained to a handicapped parking space that must not extend into the right-of-way and comments concerning the overhang. She noted recent newspaper articles about a Lee County policy called 'complete streets', and expressed her concern that future changes to Estero Boulevard may not include sidewalks. She questioned what else would impact the ability for sidewalks/bicycle paths with respect to the right-of-way

Zoning Coordinator Chapman reported that staff would recommend at the time of the Limited Review DO that the handicapped space be moved so it was fully included within the subject property boundaries. She indicated that the LPA could add this to the conditions.

Ms. Shamp asked if the roof overhang was addressed in Condition #4.

Community Development Director Fluegel explained the LPA could comment on the overhang and make a recommendation.

Discussion ensued regarding the Non-Residential Design Standards concept of extending porches and balconies (i.e. Old San Carlos).

Ms. Shamp pointed out that the LPA was still awaiting a comprehensive noise policy for the Downtown, and questioned if there had been any direction from Town Council on this issue.

Community Development Director Fluegel reported a 'noise ordinance' would be on the Town Council agenda for a Work Session on April 15, 2013, and that the Town had hired a consultant to help develop the concept of an entertainment district that could be applicable or as an overlay to the Downtown Zoning District.

Discussion was held concerning noise issues, and hours of operation until 2:00 a.m.

Community Development Director Fluegel questioned Condition #3 regarding hours of acoustic music and whether 'as controlled by future noise ordinance' could be added to the condition.

LPA Attorney Miller noted there was probably also concern regarding 'crowd noise' until 2:00 a.m.; and if the LPA had concern about uses pertaining to the proximity to residential uses then it could be modified.

Discussion ensued regarding the hours and days of the week permitted for outdoor acoustic music as requested.

Ms. Plummer questioned if there was a recommendation by staff for a limitation to the number of outdoor seating.

Zoning Coordinator Chapman recounted a previous special exception application for La Ola, and how the seating configuration was defined which created the need for La Ola to come back with a special exception request costing \$4,000 every time the owner wanted to reconfigure the seating. She reported staff had moved away from seating limitations because it was effectively controlled by the Building Code and the Fire Marshall when performing their annual inspections and setting capacity loads.

LPA Attorney Miller stated the LPA could add a condition that "*seating shall comply with the Building Code and any Fire Department requirements*".

Community Development Director Fluegel explained that the Town did not know what the final right-of-way design plans for Estero Boulevard were; however, one thing the subject application accomplished was the elimination of the back-out parking onto Estero Boulevard which staff felt was very important and that they believed it contributed to the 'pedestrian-realm'.

Ms. Shamp questioned if there was a landscape buffer requirement on Estero Boulevard according to the code.

Zoning Coordinator Chapman responded in the negative. She noted an existing landscape bed on the presentation slide which would be removed for the deck; and how landscaping or plant containers could impact the line of sight for vehicles.

Mr. Durrett questioned #2 on Exhibit 'D' regarding storing water under a deck and how to clean it out.

Zoning Coordinator Chapman recounted a prior special exception request by the Surf Club which proposed a deck over the drainage area.

Community Development Director Fluegel discussed stormwater vaults and occasional maintenance requirements and costs.

Zoning Coordinator Chapman noted matters that would be addressed during the LDO process such as but not limited to stormwater issues.

Mr. Kakatsch noted his concern regarding the closeness of the deck to both Palermo Circle and Estero Boulevard and related safety issues. He explained where he would like to see some type of bollard placed.

Zoning Coordinator Chapman pointed out that the deck would be elevated which would reduce some of the pedestrian/car conflict but not necessarily car/structure conflict. She deferred the question to the Applicant's representative.

Community Development Director Fluegel pointed out the low speed at this section of Estero Boulevard.

Ms. Plummer asked if there would be any improvements required to the sidewalk as a condition.

Zoning Coordinator Chapman responded in the negative.

Ms. Plummer reported she would like to see that area to be a 'designated design safe area', and asked if there was five feet between the sidewalk and the deck.

Zoning Coordinator Chapman addressed Ms. Plummer's question by describing the site dimensions as indicated on the projected presentation slide (i.e. right-of-way line on Estero Boulevard and Palermo Circle and Primo Drive). She added that sidewalks were generally included on rights-of-way and not private property.

Ms. Plummer explained that she would not like to block the vehicular line-of-sight on the subject property, but would like to see some type of support that would prevent a car from impacting with the deck [as noted by Mr. Kakatsch].

Town of Fort Myers Beach – Local Planning Agency

April 9, 2013

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Ms. Shamp noted in the Land Development Code there were certain setbacks from the right-of-way for structures, specifically for the purpose of line-of-sight and vision, and asked if the deck was constructed, would it go up to the right-of-way or what would be the setback from the right-of-way with regard to the line-of-sight when coming through the intersections.

Zoning Coordinator Chapman reported the deck was proposed to be built to the Palermo Circle right-of-way, not to the Primo Drive right-of-way. She noted the subject property was in a portion of the Downtown where 'built to' was encouraged, so there were no setback requirements.

Discussion ensued concerning 'theory and practice conflict' as it related to Estero Boulevard and sidewalks; the tight dimensions of the subject property; and the Applicant's ability to build to the right-of-way without providing sidewalks.

Mr. Kakatsch approached the projector screen and indicated on the site rendering slide his suggestion regarding 'white markers on Estero Boulevard and yellow concrete or steel polls every two feet' to be installed on the property.

David Easterbrook, Easterbrook Consulting & Design and representing the Applicant, noted that the Applicant wanted to eliminate the back-out parking spaces due to the safety issues associated with back-out parking. He discussed his belief that the proposed deck would be very visible even though it would go up to the property line; and addressed the sidewalk issue and reviewed his belief that there were already 'white markings' on the ground in that area. He expressed his intention not to install bollards along the property. He reported the deck would be solidly built; the asphalt under the proposed deck would be removed; and that he did not want to create a 'retention pond' under the deck, but he intended to dig down about six inches for a percolating area with crushed shell or lime rock. He added there would be access to underneath the deck and that it would be the same elevation as the 'Beached Whale'. He stated that he understood the roof had to be moved and he would pull it back in from the right-of-way. He requested to be able to use the 'as-built' survey and explained he would bring everything in on the property line, but if he needed another survey afterwards he would be "open to that".

Mr. Smith asked if the acoustic music would also be on Saturday and Sunday.

Mr. Easterbrook explained that the music at the Beached Whale would be inside on Saturday and Sunday; and that they wanted the opportunity to have a guitar player outside without amplification sitting in the corner facing the patrons on the other days.

Ms. Shamp questioned 'Exhibit B', Page 1, as it pertained to the proximity of the corner of the proposed deck to the property line in relation to the height of the deck, the stop sign on Palermo Circle, and vehicular line-of-sight.

Mr. Easterbrook pointed out there was an existing handicapped ramp that extended from the deck and a planter that was almost to the same point as the proposed deck.

Zoning Coordinator Chapman displayed an aerial map as a visual aid.

Mr. Easterbrook stated the Applicant had no problem with relocating the ADA parking space, and they might create a space for a palm tree or some plant.

Chair Zuba discussed his view that he would like to see a compromise on the sidewalk issue and his preference for some type of landscape buffering for both pedestrian and vehicle safety that would not impede the vehicular line-of-sight.

Mr. Easterbrook reported buffering was not included in their plan since there was not much room in the subject area.

Discussion ensued regarding buffering.

Chair Zuba requested Mr. Easterbrook to keep in mind some type of buffering when working with staff on the special exception.

Mr. Kakatsch discussed his support for even a three or four foot wide sidewalk along with bollards and shrubs so pedestrians would have some type of walkway otherwise he felt pedestrians would be pushed onto the street.

Mr. Easterbrook noted what was presently on the subject property and stated they would encroach less with the proposed plan.

Discussion ensued concerning pedestrian and vehicular safety; sidewalks on the Island; and an existing buffer on the front of the property.

Zoning Coordinator Chapman explained there was already a paved area in existence within the Estero Boulevard right-of-way that was being used as a sidewalk that was not reflected on the plans. She displayed an aerial view slide as a visual aid.

Mr. Easterbrook approached the projection screen and used the aerial view slide displayed to indicate the existing five foot buffer.

Chair Zuba explained that the existing five foot buffer was not defined enough at this time for the purpose of pedestrian safety.

Mr. Durrett recounted his experience in the past with a DRI for his business and the expense he incurred to install a turn lane on Estero Boulevard. He stated his belief that something needed to be done for a sidewalk.

LPA Attorney Miller interjected that the turn lane was required because his project was a DRI, and the matter at hand was a special exception.

Discussion was held regarding sidewalks and requirements for property owners.

LPA Attorney Miller stated that the County had control of the subject right-of-way. She noted that it appeared the majority of the deck was along Palermo Circle and not Estero Boulevard.

Discussion ensued concerning the subject site plan, survey, and the deck in relation to Palermo Circle.

Ms. Shamp reviewed 'Exhibit B', Page 2, with respect to the removal of the back-out parking which were included in the right-of-way, and how that would help to improve safety on Palermo Circle. She suggested painted white lines to delineate where the property ended and the location of the sidewalk. She explained her concern about the point of the deck approaching Estero Boulevard as it pertained to the vehicular line-of-sight; and suggested taking a slight curve that parallels the Boulevard instead.

Ms. Plummer discussed her views regarding the sidewalk and suggested yellow paint and white stripes that would delineate that 'no parking' on the subject space.

Community Development Director Fluegel reviewed staff's natural assumptions with the proposed special exception that the deck would come out to the limits of the existing asphalt and the existing asphalt would remain, but the indicated parking spaces would be gone. He noted that the concept of painting the area as applicable to all County road right-of-way standards and striping it as a 'no parking zone' was a good idea.

Mr. Easterbrook suggested painting 'pedestrian walkway' on the striped area; and reported he believed the Applicant would be amenable to that request; and questioned how it would be designed.

Community Development Director Fluegel pointed out that the 'no parking zone' could be a general concept but, the property owner would have to obtain a permit for right-of-way work from Lee County.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Mr. Smith: - site visit; spoke with manager; Chair Zuba – site visit; Ms. Plummer – site visit; Ms. Shamp – site visit; during site visit there was an employee who she spoke to concerning the dimensions of the proposed deck; Mr. Steele – not present.

Public Comment opened.

Larry Abramoff [sworn in by LPA Attorney] stated he owned a house at 126 Palermo Circle that was approximately 150 feet away from the subject property. He recounted his experience in serving on the Zoning Board of his former hometown and with owning a restaurant; and how he understood the position of both the LPA and the owner of the Beached Whale. He reported he was generally in favor of the special exception request; however, he noted his concerns regarding the loud amplified music inside the business until 2:00 a.m. which he could 'feel' vibrate through his house, and the current request to open up the front of the restaurant to the street side. He stated he would support the request if there could be a restriction placed on the inside music (i.e. inside music to be acoustic or amplified only until 10:00 p.m.).

Peter Dolid [sworn in by LPA Attorney] stated he owned the property at 117 Palermo Circle which was next to the Beached Whale. He echoed the comments of Mr. Abramoff's comments. He asked how the business would get the food/drink in and out of the main building to the patrons on the deck, and how this might cause the door to be opened continually which would result in the music spilling out to the neighborhood. He noted his concerns with the current noise from people congregating in the parking area; how the deck would create even more noise for the neighborhood; and asked if someone could guard the parking lot at night to prevent rowdy people from congregating in the lot. He asked that no televisions be permitted on the deck; and noted the problem he currently experienced with having cars waiting in front of his property for a parking space and using his driveway to turn around.

Bonnie Carpenter, General Manager of the Beacon Motel, explained the motel was directly across the street from the Beached Whale and she was mainly concerned with the loud noise and music that came from the subject property. She stated when sitting in her office that the windows vibrated from the music coming out of the Beached Whale; and that she had lost customers due to the loudness and late hour allowed for the inside music. She noted her belief that if the special exception was approved that it would create even more loud music and confusion in the area, and that she opposed the special exception request.

Mr. Easterbrook explained there would be a large sliding glass door coming off the restaurant to the deck with an operable swing door; and how the one door would be open during the day and then work on a 'closer' (accordion pocket-style door) at night to minimize the noise.

Ms. Plummer asked if the sliding glass door was only for the servers or for patrons, too.

Mr. Easterbrook stated it would be for everyone to use.

Ms. Shamp expressed her belief that this would be an opportunity for the Beached Whale to install high quality doors that would address the noise issue.

Mr. Easterbrook stated the doors he intended to use were insulated and hurricane-proof.

Chair Zuba asked Mr. Easterbrook to address the comments regarding the noise level of the inside music until 2:00 a.m.

Mr. Easterbrook reported the inside music ended at 1:30 a.m.

Ms. Shamp asked if the music could be 'toned down a little' after 10:00 p.m.

Mr. Easterbrook explained that it was his understanding that the band tried to keep the sound level according to the code (no more than 90 decibels).

LPA Attorney Miller stated the receiving land use for residential was '7:00 a.m. to 10:00 p.m. and was 66 decibels' and '10:00 a.m. to 7:00 a.m. and was 55 decibels'.

Town of Fort Myers Beach – Local Planning Agency

April 9, 2013

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Chair Zuba suggested a condition of approval to comply with what the Town Code provided in their noise ordinance.

Community Development Director Fluegel noted that the decibel levels as stated by the LPA Attorney was currently in the Code, and if the Town received a complaint they would enforce the decibel level.

Discussion was held concerning noise complaints and enforcement.

Ms. Shamp noted the recommended condition that '*acoustic music shall be limited to from 11:00 a.m. to 10:00 p.m.*' and suggested that it be specified as 'non-amplified acoustic music'.

Mr. Easterbrook confirmed that he understood the music would be 'unplugged'.

Chair Zuba recognized Mr. Abramoff.

Mr. Abramoff explained that approval of the special exception would give the Applicant additional seating which meant additional revenue, and the neighbors got additional noise. He requested a specific time limit be placed on the amplified music or on all music.

Public Comment closed.

Discussion ensued regarding the additional seating; a delineated sidewalk, 5-6 posts installed on the Estero Boulevard side of the sidewalk in addition to paint as discussed; closing the sliding door at 10:00 p.m.; and location of doors and access to restrooms.

Ms. Plummer questioned the status of the handicapped ramp.

Mr. Easterbrook stated handicapped access would be changed to a 'lift'.

Ms. Plummer questioned if the handicapped access was changed to a lift-style, would they also have to give access to the next level at the subject business.

Zoning Coordinator Chapman explained that would be an issue addressed at the time of building permit.

Discussion continued regarding the advantages of eliminating the front back-out parking spaces; delineating the existing five foot right-of-way as 'no parking' and for a pedestrian walkway; and inside the building noise issues and complaints from the neighbors.

Ms. Shamp discussed her recommendations as follows:

- Condition #3 - adding 'non-amplified' and 'daily' instead of Monday through Friday;
- Condition #2 - limiting the COP on the deck from 7:00 a.m. to 11:00 p.m.

- Add a Condition #6 – ‘no parking’ may be extended to the public right-of-way and the handicapped parking space must be moved so as not to extend into the public right-of-way;
- Add a Condition #7 – that the impervious or retention area under the proposed deck structure be created to capture stormwater;
- Add a Condition #8 – seating shall comply with Building Code and Fire Department regulations;
- Add a Condition #9 – Applicant shall apply for a permit from Lee County in an effort to paint and designate the ‘no parking’ area;
- Add a Condition #10 – no exterior television operation after 10:00 p.m.

Ms. Plummer suggested that Condition #3 could require all exterior sound that was provided should end at 10:00 p.m.

Chair Zuba asked if setting the outdoor alcohol consumption at 11:00 p.m. would set precedent.

Zoning Coordinator Chapman responded in the negative, and noted her experience with the Town that it had been set at a variety of times.

Discussion ensued regarding COP hours in proximity to residential.

LPA Attorney Miller pointed out her recommendation that the number of outdoor seating would comply with the Building Code and Fire Department Code; and that while the inside music was playing that the sliding door could not remain open and only be used for ingress/egress.

Chair Zuba noted his support of a designated pedestrian walkway and a ‘no parking’ zone, and a limitation on the hours as discussed.

MOTION: Ms. Shamp moved, regarding Resolution 2013-003 SEZ2013-0001, the Beach Whale, that the LPA recommends that the Town Council approve the Applicant’s request for a special exception in the Downtown Zoning District to expand the area where outdoor consumption on premises was permitted to include 636± square feet of a proposed new deck at the front of the existing building on the subject property subject to the following conditions:

1. Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and both the existing upper, and proposed new lower outdoor decks depicted on the attached ‘Exhibit C’.
2. 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 both inside the building and 7:00 a.m. to 11:00 p.m. for the outdoor deck area.
3. Non-amplified acoustic music and exterior television operation shall be limited to from 11:00 a.m. to 11:00 p.m., ~~Monday through Friday,~~ daily.
4. Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(3).

5. 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.
6. 'No parking' may be extended to the public right-of-way and the handicapped parking space must be moved so as not to extend into the public right-of-way.
7. That an impervious or retention area under the proposed deck structure be created to capture stormwater.
8. Seating shall comply with Building Code and Fire Department regulations;
9. Applicant shall apply for a right-of-way permit from Lee County in an effort to paint and designate the 'no parking' area.
10. When the interior music was playing that the sliding doors shall remain closed except by use of serving staff or patrons for entering/exiting;

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: Mr. Kakatsch.

VOTE: Motion approved 6-0.

Public Hearing closed.

Recess at 10:46 a.m. – Reconvened at 10:55 a.m.

Adjourn as LPA and reconvene as Historic Preservation Board. – **No action taken.**

Adjourn as Historic Preservation Board and reconvene as the LPA. – **No action taken; remained in session as the LPA.**

Zoning Coordinator Chapman reviewed the proposed summer schedule for the LPA and noted traditionally the Town Council went on hiatus for the month of July. She reported there were some pending public hearing cases that staff was in the process of reviewing and requested the LPA to decide on a time for their hiatus.

Discussion was held; Ms. Plummer requested an excused absence for June; and consensus agreed for the LPA hiatus to be for two months, July and August.

VI. LPA MEMBER ITEMS AND REPORTS

Ms. Plummer – reported she had been contacted by a few people during the last week regarding the length of time to obtain a permit. She asked if permitting closed down when the permit staff person was on vacation.

Community Development Director Fluegel responded in the negative; and explained when the permit staff person was out that the Town still processed the applications onto Lee County.

Discussion was held concerning a permit request for interior demolition work and the 50% Rule; permits reviewed by Lee County and the Town's permit process; and plan review and inspection services.

Ms. Plummer recounted a request to her to mention a property listed on the tax rolls as two units, zoned multi-family 19 units with two meters and the owner's attempt to acquire permit approval for window replacement.

Community Development Director Fluegel noted that the Lee County Property Appraiser did not have the ability to convey zoning rights within the Town.

Discussion was held concerning the two electrical meters on the subject property; a property owner or purchaser's due diligence to obtain documentation for zoning verification on a particular property; the inability to approve improvements for occupancy on an illegal property; research of Property Appraiser 'field cards'; and permitting requirements for window replacements.

Mr. Steele – excused.

Mr. Smith – reported a few months ago the LPA approved the IPMC and questioned if it was approved by Town Council.

LPA Attorney Miller responded in the affirmative.

Mr. Smith asked if someone was concerned about code issues at a particular property, how someone would report the matter.

Community Development Director Fluegel stated concerns should be reported to Code Enforcement; and added that staff was working to be proactive, and was currently looking at certain issues per the IPMC standards.

Ms. Plummer was excused at approximately 11:20 a.m.

Ms. Shamp – reported there was a reception planned for the Student Scholarship Art Association this Sunday from 3:00 to 5:00 p.m.; and the students’ art show would have their works exhibited from April 13-17th. She stated she had a request from a neighbor for the Public Safety Committee to look at resorts that span Estero Boulevard for crosswalks (i.e. a recent incident at 5580 Estero Boulevard). She noted the Citizens Emergency Response Team (CERT) had begun fund raising activities for their group due to reduced funding by FEMA; and that CERT volunteers have worked the first aid tents at events held for profit such as the Sand Bash. She questioned the status of the CERT volunteers as a ‘good Samaritan’ if they were receiving a donation from the event organizer.

LPA Attorney Miller read an excerpt from the Good Samaritan Act and noted her concern that the CERT volunteers were at a special event offering services when they were not properly licensed and no emergency had been declared.

Mr. Kakatsch – no report.

Mr. Durrett – no report.

Chair Zuba – discussed an article he read in The Economist about how a bridge authority tried to come up with solutions to limit traffic on an overused bridge between Portland, Oregon and Vancouver, Washington; and pointed out similarities between that situation and the Town’s bridge situation during season.

Community Development Director Fluegel suggested Chair Zuba pass along the magazine article to the Town Council.

Chair Zuba stated he prepared and distributed a 2-page report on the housing rehab assistance; and called attention to some options and information:

- The Town was not an ‘entitlement’ community to Community Development Block Grants but Lee County was; the Town did receive about \$40,000 in grant money through Lee County and the bulk of that funding was given to Bay Oaks.
- He asked that the LPA or the subcommittee participate in the decision process for the distribution of CDBG funds.
- The organization called Lee Builders Care would look at applications for assistance on the Island.

Mr. Kakatsch reported he submitted four different applications to Lee Builders Care; that they do a wonderful job; and the response time was usually about two months.

Zoning Coordinator Chapman noted there were people present who wanted to speak during Public Comment.

Consensus agreed to change the order of the Agenda.

VII. PUBLIC COMMENT

Public Comment opened.

Sally Page, President of the Shamron Beach Condo Association at 7650 Estero Boulevard, reported there had been a disturbing event at the south end of the Beach during the past week. She described the location of the condominium. She stated that last week the Town erected two eight foot high signs along the southern edge of Fort Myers Beach – “Welcome to Little Estero Island Critical Wildlife Area” and “Dogs Prohibited Beyond This Point”. She discussed the condo’s concerns about the signs; stated they were not contacted about the signs; and they do not know why they were installed. She claimed there were no nesting birds on the front of their private beach; and explained how they felt the signs were an eyesore, a form of pollution, and the signs would become a projectile during a storm. She reiterated that the condo does not know why the signs were installed, and why the condo had not been contacted. She requested guidance from the LPA about the signs and wanted to know what they had to do to have the signs removed.

Community Development Director Fluegel reported the Town’s Environmental Scientist and the State Wildlife Commission had posted signs in the critical wildlife habitat area which he understood that most of the subject area was State land. He explained it might be an issue of where the private property ended and where the State lands began, and that the signs were in the general habitat area of migratory nesting birds. He suggested Ms. Page make an appointment with the Town’s Environmental Scientist to discuss the matter.

Ms. Page reported that the condo’s deed indicated the property line went to the Gulf of Mexico; and that she had lived there since 1987 and this was the first time she noticed signs encroaching onto the beach, and it was her understanding that the signs were not temporary.

Community Development Director Fluegel discussed ‘temporary signs on an annual basis’ for migratory bird nesting season and permanent signs that would be placed in the State’s conservation easement.

LPA Attorney Miller noted that with respect to private property that even though a deed may show the property line going to the Gulf of Mexico, that anything seaward of mean high water was State land.

Paul Page, resident and property owner at 7650 Estero Boulevard, noted that when he first moved to the condo in 1987 that the subject critical wildlife area was a semi-submerged island that appeared at the lowest tide and then the land began to move out and joint that area. He discussed how the dimension and shape of the subject area had changed over the years; and noted his concern for the protection of the birds.

Public Comment closed.

Chair Zuba noted that it was his understanding that the signs were installed to help protect the birds.

Mr. Kakatsch stated he was well aware of what was at the condo site and what had changed over the years. He told of an incident that occurred years ago when two visitors to the beach and tennis resort decided to remove vegetation with chainsaws during the night in order to improve their room view; how the resort had been fined \$82,000 by the State; and how the vegetation removal had changed the complexion of the area all the way down to the Shamron Beach Condo.

Mr. Page stated he opposed any changes that would be made to natural vegetation; however, he was most upset with that someone introduced plantings into the Little Estero Island area across from his condo with the intent to hold the land.

Discussion was held concerning vegetative plantings by the State.

LPA Attorney Miller interjected that the Town had hired a coastal engineering firm that was doing some studying and modeling, and the firm would come back with recommendations for the Town.

Ms. Page reiterated that she felt it was wrong for the signs to be installed without informing the condominium board.

Community Development Director Fluegel asked if Ms. Page was representing a formal vote on the matter by the condominium board.

Ms. Page responded in the negative; and added there was a condominium board meeting next week and she would forward a formal action by her board to the Town.

VIII. LPA ATTORNEY ITEMS

LPA Attorney Miller – stated she read further into the Good Samaritan Act which said “*any person who acts or omissions not otherwise covered by this section and who participates in emergency response activities under the direction of or in the connection of community emergency response team*” was not liable for any damages. She indicated that there could be problems if a CERT volunteer was not acting during an official emergency response.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Zoning Coordinator Chapman reported the May agenda would include the Lani Kai sign variance.

Community Development Director Fluegel reported:

- Noise/entertainment ordinance was scheduled for the April 15th Council Work Session.
- Short-term rental ordinance was discussed at the Council Work Session on April 1st; and staff was working to respond to the questions asked by the public and the Council.

LPA Attorney Miller explained the preemption of the State statute as it pertained to short-term rentals.

Discussion was held concerning Council's discussion and direction of short-term rentals at their April 1st Work Session.

Mr. Kakatsch asked if Town staff was following the County as it related to Estero Boulevard improvements.

LPA Attorney Miller stated she was involved with the County as it related to Estero Boulevard.

Community Development Director Fluegel continued to report that:

- The beach raking ordinance was going back to a Council Work Session on April 15th.

Zoning Coordinator Chapman asked for a volunteer to represent the LPA at the May 6th Council meeting regarding the Moss Marine signs.

Discussion was held concerning LPA representation at the Council meeting; and Ms. Shamp and Mr. Kakatsch offered to attend the May 6th meeting.

Community Development Director Fluegel explained that the Town was beginning to transition into more of a redevelopment economy, and one of the side effects were a lot of transactions on older homes that needed clear and compelling evidence when determinations were required for ancillary permits.

Discussion was held about various processes such as but not limited to zoning verification process, administrative interpretation process, and the accessory apartment determination process.

Mr. Durrett asked if there were any planned enhancements to the Building Department.

Discussion was held concerning the length of the permit process; that there was no intention at this time to expand or enhance the Town's Building Department; and the Town's use of temporary help or consultants during peak times or for particular issues.

X. LPA ACTION ITEM LIST REVIEW

XI. ITEMS FOR NEXT MONTH'S AGENDA

None.

XII. ADJOURNMENT

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

VOTE: Motion approved, 6-0.

Meeting adjourned at 11:55 a.m.

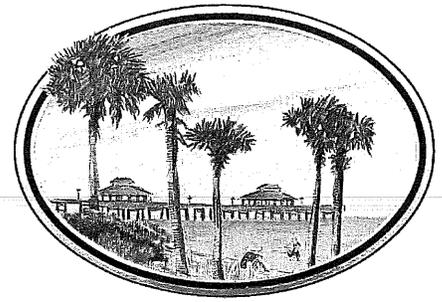
Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

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DRAFT



Town of Fort Myers Beach

Memorandum

To: Mayor, Vice Mayor and Council Members
From: Leslee Chapman, Zoning Coordinator
CC: Terry Stewart, Town Manager
Walter Fluegel, Community Development Director
Date: May 17, 2013
Re: SEZ2013-0001, The Beached Whale

Case SEZ2013-0001, a special exception in the DOWNTOWN zoning district to expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck at the front of the existing building on the subject property, was heard at the April 9 Local Planning Agency (LPA) meeting. LPA heard the case and voted 6-0 to recommend approval, with 10 conditions, to Town Council.

Since the April LPA meeting, additional concerns from surrounding property owners have been raised regarding the case and Staff would like to take the opportunity to address some of these concerns.

Upper Deck

Concerns were raised that the LPA packet did not include Lee County Special Permit 93-12-23-SP-01 in the packet. This special permit was granted by Lee County in 1993 and allowed the applicant to have outdoor consumption on premises on the upper level deck. This application, included as part of SEZ2013-0001, is a request for a new deck at the first floor level and did not include a request for any changes to the approval for the upper level deck. See *Exhibit E*.

Visibility Triangle and Sidewalks

Both the LPA and Staff were very pleased to see that the applicant proposes removing the back out parking along the Estero Boulevard frontage. The LPA, however, was concerned about pedestrian traffic in that area and recommended that a sidewalk be provided along that same frontage where the parking was being removed. In fact LPA included condition #9 that requires the applicant to attempt to secure a permit with Lee County to paint a sidewalk on the pavement in that area. As you can see from the embedded photo, a painted delineated sidewalk already exists along this stretch of Estero Boulevard.



Since LPA Condition #9 has, therefore, already been fulfilled, Staff has removed it from draft Town Council resolution 13-09.

Following the LPA meeting, Staff met several times with the applicant's agent, Dave Easterbrook, to discuss some of the new issues raised by the neighbors. One of the matters discussed and requested by Staff from the applicant was a drawing showing compliance with the visibility requirement set forth in LDC Section 34-662. Staff was very clear that this additional exhibit would be very helpful in assisting Staff, Council and the general public to understand the request and its physical impact on the surrounding properties. Mr. Easterbrook submitted *Exhibit F* on Friday May 17th. However with no narrative explanation or drawing labels identifying it, Staff cannot opine whether this amended drawing (which also appears to have reduced the size of the deck but Staff cannot confirm that either since no area calculation was provided) does indeed comply with the visibility requirements of Sec. 34-662.

Noise

Another concern raised by the neighbors is noise. The Beached Whale received their first approval for consumption on premises 11/1/93. See Exhibit A. They received their outdoor consumption on premises for the upper deck on 12/23/93. Attached as *Exhibit G* is a GIS map delineating surrounding property and whether the current owner purchased the property before or after the COP approval in 1993. Property purchased before the 1993 approval are shown in blue and those properties purchased after the consumption on premises approvals in 1994 are shown in yellow. While Staff can appreciate the concerns of surrounding property owners concerning noise, Staff is confident that the recommendation for approval, as conditioned by both Staff and the LPA, is a fair balance between the

applicant's request and consideration of the surrounding residential property. The subject property is located on Estero Boulevard in the Downtown zoning district and live entertainment is approved at various locations throughout the district area.

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL PERMIT: CASE 93-12-23-SP-01
APPLICANT: RAYMOND J. MERTENS, SR., in reference to OAKBROOK INC., dba
BEACHED WHALE
HEARING DATE: December 23, 1993

I. APPLICATION:

Filed by RAYMOND J. MERTENS, SR., 18308 Cutlass Drive, Fort Myers Beach, FL 33931 (Applicant/Owner).

Request is for a special permit in the C-1 (Commercial) district for outdoor seating (Zoning Ord. Section 202.03). The Applicant wants to have outdoor service of alcoholic beverages at an existing restaurant.

The subject property is located at 1249 Estero Blvd., (San Carlos Blvd. to Estero Blvd., left to Palermo Circle intersection), Fort Myers Beach, in Section 19, T46S, R24E, Lee County, Florida. (District #3)

The Strap # as furnished by the Applicant is: 19-46-24-06-0000H.0300

II. STAFF RECOMMENDATION: APPROVE WITH CONDITIONS

The Department of Community Development Staff Report was prepared by Pam Houck. The staff report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner APPROVES the Applicant's request and GRANTS a Special Permit in the C-1 (Commercial) district for outdoor seating (Zoning Ordinance Section 202.03) for the real estate described in Section VIII. Legal Description WITH THE FOLLOWING CONDITIONS:

1. Use of the outdoor seating shall be in conjunction with a Group III restaurant;
2. The special permit shall be limited to the 48-foot by 40-foot deck located on the roof of the existing restaurant as reflected on the Applicant's site plan attached to the Staff Report as Exhibit C;
3. A bar or cocktail lounge on the deck shall be prohibited;
4. There shall be no entertainment on the deck; however, recorded background music (excluding rap, hard rock and heavy metal music) will be allowed;
5. Lighting on the deck shall be shuttered and shielded from surrounding properties;
6. The deck shall be used only between 11:00 A.M. and 11:00 P.M. daily; and
7. The restaurant and deck shall be limited to a total of 164 seats (114 indoor and 50 outdoor).

IV. HEARING EXAMINER DISCUSSION:

Applicant is the owner of the subject property which is developed with a 150-seat, Group III restaurant on Fort Myers Beach, having purchased the property in July 1993. The property is zoned C-1, was developed with the restaurant building in 1945, and has been used as either a restaurant or bar since that date.

Applicant desires to expand the restaurant use to the existing deck on the roof of the building, and needs a Special Permit in order to serve alcoholic beverages there. He stated that he will serve alcoholic

beverages only in conjunction with the meal service, and does not want to have a cocktail bar or lounge on the deck, because of the adjacent residential neighborhoods.

Staff recommended approval of the Special Permit, with seven conditions intended to limit its use and hours of operation to ensure its compatibility with the surrounding mixed uses. Staff found that the request, as conditioned, met the criteria for approval set out in Section 900.02 of the Zoning Ordinance, and that the use, as conditioned, would not be incompatible with, nor a nuisance to, the adjacent property owners.

The undersigned Hearing Examiner concurs with Staff's analysis, findings and recommendation of approval with conditions. The Hearing Examiner also finds that the request, as conditioned, is consistent with the provisions and intent of the Lee Plan and the Zoning Ordinance. It is the Hearing Examiner's opinion that the conditions recommended by Staff are sufficient to protect the health, safety and welfare of the surrounding property owners and residents, and eliminate the nuisance potential of the use.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. That the Special Permit, as conditioned, will not have a negative impact on the intent of the Zoning Ordinance.

B. That the Special Permit, as conditioned, is consistent with the goals, objectives, policies and intent of the Lee Plan, and with the densities, intensities, and general uses set forth in the Lee Plan.

C. That the Special Permit, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use.

D. That the site is already developed and there are no environmentally critical areas or natural resources to be adversely affected by the granting of the Special Permit.

E. That the Special Permit, as conditioned, will be compatible with existing or planned uses, and will not cause damage, nuisance, hazard or other detriment to persons or property.

F. That the location of the requested Special Permit does not place undue burden upon existing transportation or other services and facilities, and does not increase the traffic utilizing the surrounding roadway network.

G. That the requested use, as conditioned, complies with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in the Lee County Zoning Ordinance.

H. That granting the requested Special Permit, as conditioned, is not contrary to the public interest, public health, public safety, public convenience or public welfare of the citizens of Lee County.

VI. PRESENTATION SUMMARY:

Pam Houck, Division of Zoning, presented the Staff Report in this request for a special permit in the C-1 (Commercial) district for outdoor seating, which would be located on a deck on the top of a building located at 1249 Estero Blvd. The subject property is presently being operated with a Group III restaurant known as the Beached Whale. County records indicate that the building was built around 1945 and, since that time, has been continuously used as either a bar or restaurant. The Applicant wishes to have consumption of alcoholic beverages on this deck in conjunction with meals. Hours of operation proposed by the Applicant were from between 11:00 a.m. and 11:00 p.m. on weekdays, and from 11:00 a.m. to 1:00 a.m. on weekends.

The surrounding area contains a mixture of commercial and residential zoning and uses. Immediately adjacent to the rear (north and east) of the property are single-family residences. Because of the mixed uses and the location of the deck on top of the building, Staff feels that, with the conditions recommended, this special permit will be consistent with the Zoning Ordinance and the criteria set out for the approval of a special permit.

Staff recommended seven conditions on this special permit. Conditions 1 and 2 would limit the use of the outdoor seating in conjunction with the Group III restaurant and to the existing deck. The site plan (Exhibit C to the Staff Report) depicts the deck on top of the building. Condition 3 would prohibit a bar or cocktail lounge on the deck. Condition 4 would allow recorded background music on the deck, but no entertainment would be permitted. Condition 5 requires that the lighting on the deck be shuttered and shielded from surrounding properties. She noted that this was already a requirement of the Zoning Ordinance, but Staff wanted to emphasize this. Condition 6 limits the hours of operation for the deck from 11:00 a.m. to 11:00 p.m., daily. The number of seats would be limited by Condition 7; a total of 164 seats (114 indoor and 50 outdoor) would be allowed. Fifty seats on the upper deck will not over-crowd the deck and will still provide a reasonable use of the area.

The Hearing Examiner noted that Condition 3 prohibited a bar or cocktail lounge and asked if this was with regard to the deck itself. Mrs. Houck confirmed this. The Applicant could have a bar downstairs in conjunction with the restaurant. She noted that a restaurant and a bar triggers additional parking. Currently, the property was operating as a Group III restaurant. She believed that they were going to have a "bar" on the deck where people could sit on stools; however, it was just like the tables. She compared it to a lunch counter with a "bar." Food and beverage could be served there. The condition was not to prohibit this; it was to prohibit just the service of alcoholic beverages on the deck.

With regard to Condition 4 and the "recorded background music," the Hearing Examiner asked exactly what this referred to. Mrs. Houck responded that the condition was not limiting the Applicant to a "type" of music. The Hearing Examiner noted that one of the letters received objected to the type of music played and the nuisance it would create. Mrs. Houck did not believe that the Applicant wanted heavy metal or rap music; however, the Hearing Examiner could clarify the condition if she wished.

Ray Mertens stated that he had no problem with the seven conditions recommended by Staff. The recorded music would be of the type typically heard in a restaurant for background music. They have installed the volume controls for the speakers on the deck in the office, under lock and key. Once it is set, it shouldn't be tampered with. They also have another safeguard. The bartenders must sign a statement that, if they ever adjust the volume, they will be terminated. If the manager forgets to lock the office, the bartender knows his job is on the line if he tampers with the volume.

Mr. Mertens stated that they had played music for approximately eight nights to make sure it was not exceeding their border or disturbing anyone. They had been fine on this, because they fully recognize what the neighborhood went through with the previous situation. They really want to utilize the deck to the restaurant's advantage and run a good, reputable restaurant. They wanted to be a "positive" influence for the neighborhood, which would also have a positive effect on their business. He stated that it was important to note that the County had not received "5,000" letters against this request. He felt that the neighborhood had given them a "shot" to see what they would do and they were going to respect this.

The Hearing Examiner asked the Applicant if he had any objection to the 11:00 p.m. deadline. Mr. Mertens responded no. He added that, in fact, they were going to come up with something to expedite this by enticing the patrons downstairs a little earlier than 11:00 p.m. They'd like the

leeway, but recognize the problem and want to make sure that the patrons are done and gone from the deck. The Hearing Examiner noted that ~~partiers~~/drinkers tended to forget how loud they were getting.

Tom Lump stated that he was one of the neighbors, directly behind the Beached Whale. He had gone through the past "situation" with the previous owners. He stated that he probably had 150 complaints lodged at the Sheriff's Department (written, etc.). He believed that Mr. Mertens would do an excellent job and he was welcomed to the neighborhood. He was glad to see the recommended conditions. He did question whether, if this building was sold, what would happen in a "grandfather" situation with the conditions. Would there be another public hearing if the use of the top deck was changed? How would the neighbors' concerns be addressed?

Patrick White, Assistant County Attorney, stated that he did not believe that a consumption on premises license automatically transferred or could be sold. He believed a new owner would have to reapply before that the special permit carried over. Mrs. Houck stated that the special permit would run with the land, unless specifically conditioned.

Mr. Lump pointed out that, when the previous business ended, the neighbors counted the six month and a day time limit (for grandfathering). They had understood a public hearing would have to be held before the establishment could reopen. The Hearing Examiner noted that it did not work in this manner. This would only be the case if the property were not properly zoned for the use. Mrs. Houck stated that the property was zoned C-1. The Hearing Examiner pointed out that, if the property were zoned for a restaurant use, then a new user would only have to obtain the Certificate of Occupancy to begin a new restaurant. The permits for COPS might be held individually; however, the right to have them (the special permit) would run with the land. There was no grandfathering issue in this case; the restaurant was permitted by right.

Mr. Lump asked what recourse the neighbors had with regard to entertainment on the top deck. The Hearing Examiner stated that any new owner/user would still be bound by the conditions of the special permit. If they wanted the conditions changed, they would have to apply for a new special permit. This would require another public hearing.

Mrs. Houck pointed out that, if the owner/user wanted to change the use to only a bar/cocktail lounge, they would also have to request another special permit. Again, this would require another public hearing.

Mr. Mertens responded that this was also his understanding; however, if it wasn't, he would agree to an eighth condition that if he sold the business, the future owner would have to come back for a special permit. He pointed out that he also lived in the neighborhood and didn't want it to turn into a rock band place. The Hearing Examiner noted that the local laws would provide protection in this event.

The Hearing Examiner stated that she would conduct a site visit to familiarize herself with the subject property and the adjacent neighborhood. The conditions recommended by Staff appeared to be adequate; if not, she would add additional conditions, after visiting the site.

VII. PUBLIC PARTICIPATION: The following persons appeared at the hearing or became "parties of record" in this case by submitting written materials:

ADDITIONAL COUNTY STAFF:

1. Patrick WHITE, Assistant County Attorney, Lee County, P.O. Box 398, Ft. Myers, FL 33902-0398

FOR:

1. Leslie T. AHRENHOLZ, P.O. Box 2656, Fort Myers Beach, FL 33931
Letter 12/10/93: My residence is located immediately adjacent to the Applicant's property and would probably be more directly impacted than any other in the neighborhood. I have absolutely no financial interest

in the outcome of the hearing. Neither have I been in the restaurant operating on the first floor since it recently reopened.

I am, however, completely familiar with the building including the second floor which is to provide outdoor seating. I have taken the opportunity to discuss at length with Mr. Mertens his intended use and method of operation on the premises. After due consideration, it is my opinion that the requested special permit should be granted as being well within a purview of Section 202.03 of the Zoning Ordinance.

I am aware that there are others who reside or are in business in the vicinity who do not share *my* opinion. I was solicited to join a group of these people in objecting to the application which I declined to do. With the exception of a 6-month period during which one of the prior owners operated the facility in an admittedly raucous manner, I have resided in my home without annoyance. I believe the special permit should be granted.

AGAINST:

1. Albert J. DACRE, 60 Collins Drive, Lafayette, IN 47904
Letter 12/16/93: As an adjacent property owner, and as I will not be able to attend the hearing on this matter, I wish to enter these comments into the record for consideration and review. My concerns are:

1. Trash - what is the probability of trash being tossed from the upper deck and being allowed to accumulate on or around the property? A small concern.

2. Vandalism and crime - there are significant police (sheriff) calls to the 7-Eleven store which is directly across the street from the subject property. Property damage and fights occurred numerous times in the 1992-1993 season. I believe there was a two car response to that location the evening of December 9th or 10th (two nights ago). Outdoor crowds without proper security seem to encourage a considerable amount of rowdy behavior now and in the past. Will this encourage more of the same? Will it increase in the future because of more gatherings to see the "new" outdoor spot? Who will see to the overall safety and security of the neighbors and businesses in the immediate area?

3. And most important, noise levels - usually prior to the problems brought up in (2), cars with very loud stereo systems park at either the 7-Eleven or in the Beached Whale lot. These cruise the immediate streets seemingly without interference. If they are asked to move, they return shortly. Are these people ticketed for their violation? Will this be allowed to continue? Will it become worse or better? Until recently Chili Caliente had live, very loud music out back. It has stopped for now. Will the Beached Whale create such a nuisance? I hope not.

I like outside bars, but I would like them to be encouraged to operate within the law. Let's also let the law help local businesses to successfully operate.

2. Jim BISCHOFF, 21570 Madera Road, Fort Myers Beach, FL 33931
Letter 12/15/93: I would like it to be noted that I'm against the outdoor seating for the Beached Whale. I have been a property owner in the adjacent area of some 20 years. If outdoor seating is permitted, I feel there would be no control over the liter and noise created from patrons and management music.

GENERAL:

1. Mr. & Mrs. Bill DAY, 155 Palermo Cir., Fort Myers Beach, FL 33931
Letter 12/21/93: The only objection we have is if they have loud music on the upper deck. The music that was there before kept us awake a lot.

2. Tom LUMP, 145 Palermo Cir., Fort Myers Beach, FL 33931
Testimony: See Section VI. Presentation Summary.

VIII. LEGAL DESCRIPTION:

A parcel being in Lots 30, 31 and 32, Block "H", VENETIAN GARDENS SUBDIVISION, as recorded in Plat Book 6, Page 70, Lee County, Florida, more particularly described as follows:

From the Northwest corner of said Lot 32. run $S00^{\circ}17'35''W$ along the Easterly right-of-way of Primo Drive, 28.07 feet to the POINT OF BEGINNING of lands herein described; from said POINT OF BEGINNING continue $S00^{\circ}17'35''W$ along said Easterly right-of-way of Primo Drive 106.93 feet to a point on the Northerly right-of-way of Palermo Circle; THENCE along said Northerly right-of-way of Palermo Circle in an Easterly direction to the Southwesterly corner of Lot 29, Block H, said VENETIAN GARDENS SUBDIVISION;
THENCE $N39^{\circ}44'07''W$, 117.54 feet to a point on the line which is parallel to Primo Drive;
THENCE $S00^{\circ}17'35''W$, 17.74 feet;
THENCE $S88^{\circ}29'35''W$, 68.02 feet to the POINT OF BEGINNING.

AND

Part of Lots 29, 30 and 31, Block H, VENETIAN GARDENS SUBDIVISION, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court in Plat Book 6, Page 70, more fully described as follows:

BEGINNING at the Southeast corner of Lot 29;
THENCE Northwesterly to a point 20 feet from the Northeast corner of Lot 29 and on North line of said lot;
THENCE Southwesterly on said line 50 feet to a point which is 10 feet West of the Northeast corner of Lot 31;
THENCE Southeasterly to the Southeast corner of Lot 30;
THENCE Northeasterly and along said lot line to the POINT OF BEGINNING.

IX. APPEALS:

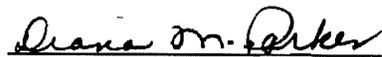
This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered.

X. COPIES OF TESTIMONY AND TRANSCRIPTS:

A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the Official Court Reporter, 20th Judicial Circuit, Lee County Justice Center, Fort Myers, Florida. The original documents and original file in connection with this matter are located at the Lee County Department of Community Development, 1831 Hendry Street, Fort Myers, Florida.

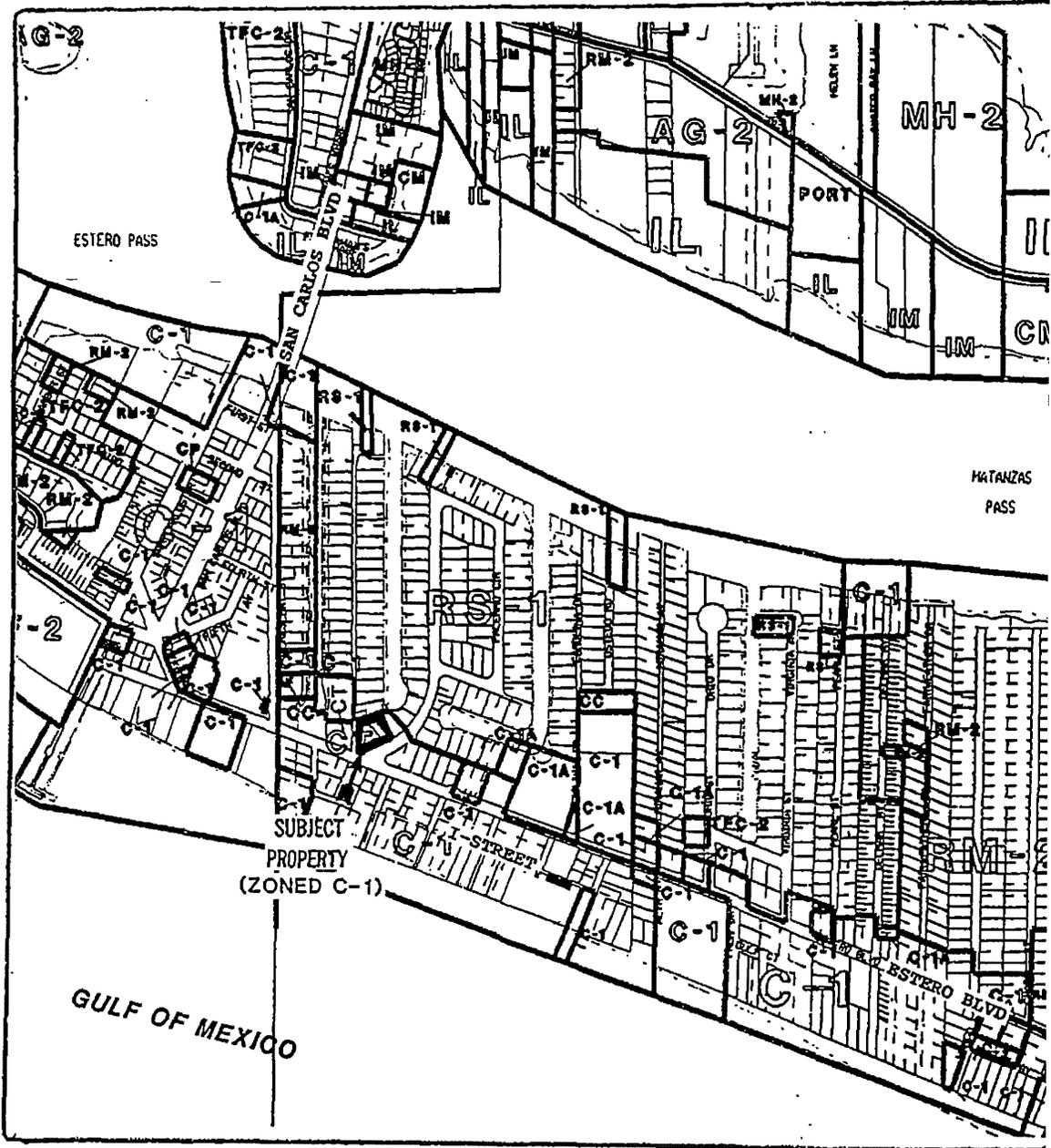
B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 7th day of January, 1994. Copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.



DIANA M. PARKER
LEE COUNTY HEARING EXAMINER
2269 Bay Street
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 813/338-3190

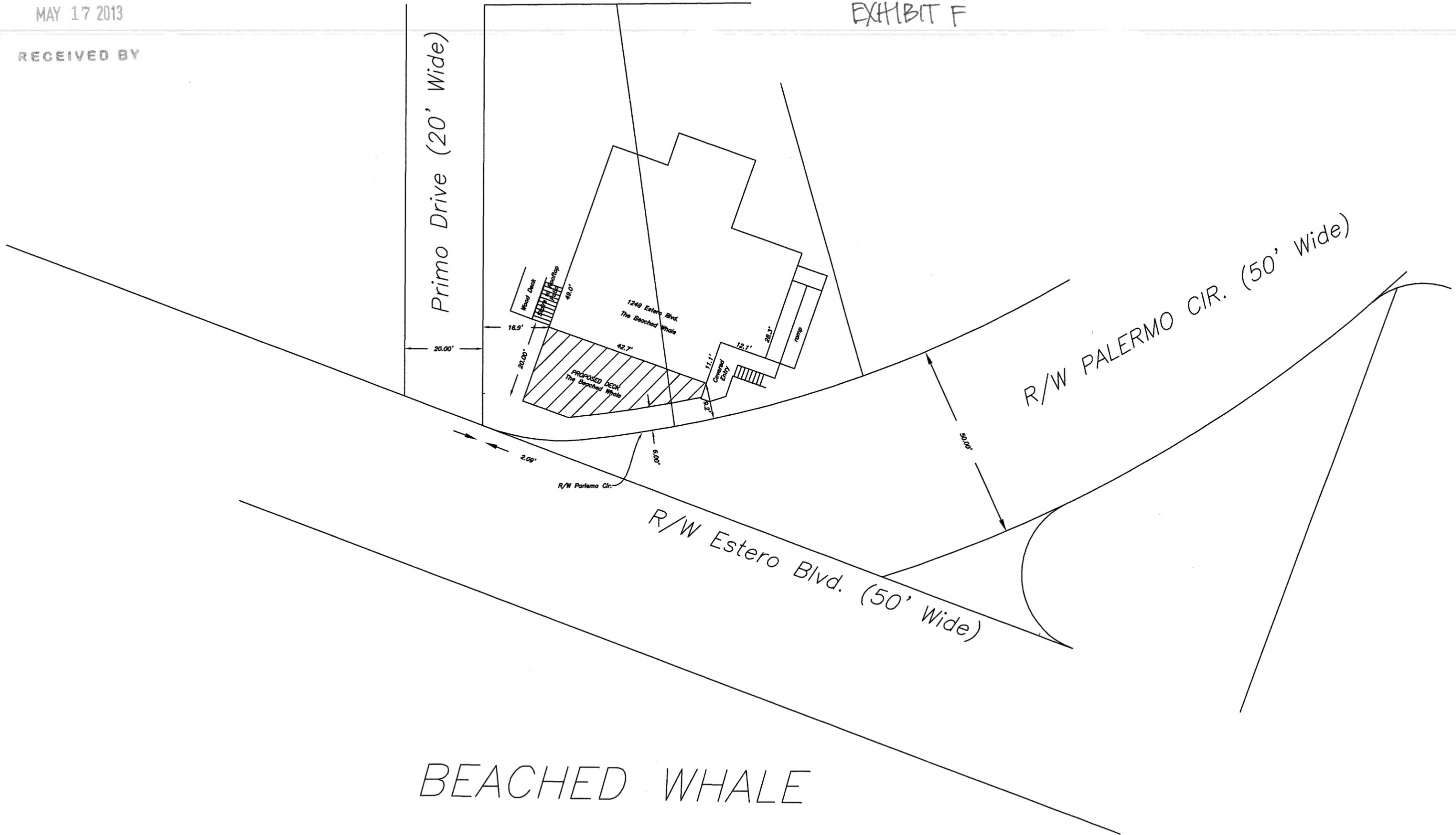
Adjacent. Zoning



MAY 17 2013

RECEIVED BY

EXHIBIT F



BEACHED WHALE

Primo Street - Pre and Post Beached Whale opening date





Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception
CASE NUMBER: SEZ2013-0001
LPA HEARING DATE: April 9, 2013
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Marty Harrity
David Easterbrook, authorized agent
Eric Beck, authorized agent

Request: A special exception in the DOWNTOWN zoning district to expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck at the front of the existing building on the subject property.

Subject property: VENETIAN GARDENS
BLK H PB 6 PG 70
LOTS 30 31+32+ PT LT 29

Physical Address: 1249 Estero Boulevard Fort Myers Beach FL, 33931

STRAP #: 19-46-24-W4-0060H.0300

FLU: Pedestrian Commercial

Zoning: DOWNTOWN

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

Adjacent zoning and land uses:

North: Multi-Family
DOWNTOWN
Pedestrian Commercial

E

South: The Beacon Motel
DOWNTOWN
Pedestrian Commercial

East: 7 Eleven
DOWNTOWN
Pedestrian Commercial

West: Silver Sands Motel
DOWNTOWN
Pedestrian Commercial

II. BACKGROUND AND ANALYSIS

Background:

The applicant has requested a special exception in the DOWNTOWN zoning district in order to expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck off the front of the existing building on the subject property.

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

The Beached Whale, 1249 Estero Boulevard, is a restaurant that has a 4COP SRX liquor license. It is located just past the Sky Bridge on the north side of Estero Boulevard at the corner of Palermo Circle and Primo Drive in Fort Myers Beach. The original approval for consumption on premises was granted by Lee County Administrative Approval Number COP-93-007, which is attached as *Exhibit A*.

The restaurant is a popular dining establishment and is surrounded on all sides by parking spaces. The applicant desires to expand their serving capacity by removing the back-out parking spaces along the Estero Boulevard frontage and constructing a new 636± square foot deck in its place. See *Exhibit B*. A majority of the proposed new deck are will be covered by a metal roof as depicted in the drawings attached as *Exhibit C*.

Analysis:

The subject property, which includes The Beached Whale restaurant, is located in the DOWNTOWN zoning district and is within walking distance to Times Square, Lynn Hall Memorial Park and Crescent Beach Family Park as well as numerous hotels, motels and rental properties. This district is known for a variety of establishments offering a range of food and beverage options, so a request for outdoor consumption on premises in this area is not a unique or unusual request.

The regulations for the DOWNTOWN zoning district are found in LDC Section 34-678, and encourage restaurants to provide outdoor seating areas located on porches or patios, largely between enclosed buildings and the street. The subject property is located just outside of one of the most intensive commercial areas of the Town, where commercial uses begin to be interspersed with residential and hotel/motel properties in a mixed use fashion, and is relatively far from the predominantly residential areas of the Town.

The sidewalks on both sides of Estero Boulevard, the availability of commercial parking lots, and the popular use of the beach near the Lee County fishing pier, Lynn Hall Memorial Park, and Crescent Beach Family Park help to attract beach-going pedestrians to the area. The applicants' restaurant is among a large number of commercial and retail uses in this part of the Town, several of which provide outdoor seating. The presence of visiting pedestrians transitioning between parking areas, retail stores, restaurants, the beach, and nearby motels, is a long-established custom that will not be affected by approval or denial of the current request. The immediate vicinity is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision for this area does not require that it be transformed from an intensive commercial area into a primarily residential district. Furthermore, the Comprehensive Plan specifically contemplates that the Times Square area (i.e. Downtown Core Area) will include a more intensive mix of commercial activities including outdoor uses.

The applicant's specific request is for outdoor consumption on premises on an proposed elevated deck area measuring 636± square feet that extends out from the existing structure up to the Estero Boulevard and Palermo Circle right-of-way, with the majority of the proposed deck being covered by a new metal roof. In order to install the proposed new deck, the applicant will be removing parking spaces that currently cause patrons to back-out onto Estero Boulevard.

The applicant states that the deck will support 47 new seats. Staff, however, does not recommend that any conditions be included that limit the number of seats, because the seating area can be limited by reference to the applicant's site plan, which clearly delineates the proposed deck and seating areas. Changes to the types of seats used on the proposed deck or amendments to the building code could allow a somewhat different seating capacity within the same floor area in the future.

The existing restaurant use requires twenty (20) parking spaces, including one (1) ADA space. There are thirty-eight (38) parking spaces provided currently, including two (2) ADA spaces, for use by the patrons of The Beached Whale. The applicable parking requirements found in LDC Sections 34-2020 and 34-676 indicate that the additional square footage from the proposed deck requires three (3) additional parking spaces. The applicant currently provides more than the required parking spaces for the existing use. The proposal to remove six (6) parking spaces that back-out onto Estero Boulevard in order to install the proposed deck therefore does not violate the parking requirements in the LDC.

Additionally, with ever increasing traffic congestion on Estero Boulevard, especially on this section of the roadway approaching the Sky Bridge, and with direction from the Town's Comprehensive Plan (Policy 7-H-10) to limit the number of access points and *'take advantage of any suitable opportunities to consolidate street connections into fewer access points onto Estero Boulevard'* Staff is fully supportive of removing the six (6) parking spaces. This action, while reducing the overall number of parking spaces serving the restaurant use

on the subject property, will have a much greater overall positive impact on Estero Boulevard and its daily users by eliminating the pedestrian/vehicular conflicts on this frontage and improving traffic flow at peak periods of travel.

The applicant indicates that they intend to operate between the hours of 7:00 am and 2:00 am, hours that are within the allowable limits set forth in Town Ordinance 96-06, which prohibit service of alcohol between 2:00 am and 7:00 am throughout Fort Myers Beach. They are also requesting permission to provide acoustic music from 11:00 am to 10:00 pm Monday through Friday.

Although the applicant has proposed these operation and entertainment hours, Town Council may find that a condition(s) is (are) necessary to protect the public health, safety, and welfare.

Public Works Director, Cathie Lewis, provided Staff with a memo detailing preliminary comment regarding the proposed use. See *Exhibit D*. Public Works comments deal most directly with issues that can be addressed at the time of the limited review development order, i.e. providing stormwater drainage under the proposed deck and repositioning the required ADA parking spaces so they do not encroach into the Palermo Circle right-of-way. The other comment relates to the proposed roof extending into the surrounding right-of-way. Upon review of the site details, *Exhibit C*, there is a corner of the proposed metal roof that would encroach into the right-of-way. The Commercial Design Standards, beginning in Section 34-991, encourage overhangs into the right-of-way. With Public Works' concern in mind, Staff recommends that any approval of the applicant's request include a condition that the roof must be in compliance with Section 34-995(e) which regulates facade projections, to ensure that any overhang does not exceed the allowable limits set forth in that section.

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, that 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.

Furthermore, with increasing congestion and traffic delays on Estero Boulevard, and the delay in Lee County making improvements to that right-of-way, the Comprehensive Plan encourages any opportunity to remove traffic obstacles and improve traffic flow should be encouraged and

supported. The applicant's request to remove six (6) back-out parking spaces 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. 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, 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. Approval of the applicant's request should be conditioned to require that any outdoor lights meet with the Sea Turtle lighting requirements.

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 §34-1264. 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 in the DOWNTOWN zoning district to expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck at the front of the existing building on the subject property. Recommended conditions for approval are as follows:

1. Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and both the existing upper, and proposed new lower outdoor decks depicted on the attached *Exhibit C*.
2. Hours of operation for consumption on premises shall be limited to the hours of 7:00 AM to 2:00 AM, daily for both inside the building and the outdoor deck area.
3. Acoustic music shall be limited to from 11:00am to 10:00 pm Monday through Friday.
4. Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(3).
5. 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.

IV. CONCLUSION

Staff recommends **APPROVAL WITH CONDITIONS** of the requested special exception in the DOWNTOWN zoning district to expand the area where outdoor consumption on premises is permitted to include 636 ± square feet of a proposed new deck at the front of the existing building on the subject property.

Exhibits:

Exhibit A – Lee County Administrative Approval COP-93-007

Exhibit B – Site Survey and proposed deck site plan

Exhibit C – Proposed building details

Exhibit D – Public Works Director memo

|

EXHIBIT A

ADMINISTRATIVE APPROVAL NO. COP-93-007

ADMINISTRATIVE APPROVAL
CONSUMPTION ON PREMISES
LEE COUNTY, FLORIDA

WHEREAS, Raymond J. Mertens, Sr., has filed an application for administrative approval for Consumption on Premises for a 4-COP-SRX alcoholic beverage license on a project known as The Beached Whale; and

WHEREAS, the subject property is located at 1249 Estero Boulevard, Fort Myers Beach, described more particularly as:

LEGAL DESCRIPTION: In Section 19, Township 46 South, Range 24 East, Lee County, Florida:

A parcel being in Lots 30, 31 and 32, Block "H", VENETIAN GARDENS SUBDIVISION, as recorded in Plat Book 6, Page 70, Lee County, Florida, more particularly described as follows:

From the Northwest corner of said Lot 32, run S00°17'35"W, along the Easterly right-of-way of Primo Drive, 28.07 feet to the POINT OF BEGINNING of lands herein described;

From said POINT OF BEGINNING continue S00°17'35"W, along said Easterly right-of-way of Primo Drive 106.93 feet to a point on the Northerly right-of-way of Palermo Circle;
THENCE along said Northerly right-of-way of Palermo Circle in an Easterly direction to the Southwesterly corner of Lot 29, Block H, said VENETIAN GARDENS SUBDIVISION;
Thence N39°44'07"W, 117.54 feet to a point on the line which is parallel to Primo Drive;
THENCE S00°17'35"W, 17.74 feet;
THENCE S88°29'35"W, 68.02 feet to the POINT OF BEGINNING.

AND

Part of Lots 29, 30 and 31, Block H, VENETIAN GARDENS SUBDIVISION, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court in Plat Book 6, Page 70, more fully described as follows:

BEGINNING at the Southeast corner of Lot 29;
THENCE Northwesterly to a point 20 feet from the Northeast corner of Lot 29 and on North line of said lot;
THENCE Southwesterly on said line 50 feet to a point which is 10 feet West of the Northeast corner of Lot 31;
THENCE Southeasterly to Southeast corner of Lot 30;
THENCE Northeasterly and along said lot line to POINT OF BEGINNING.

WHEREAS, the applicant has indicated the property's current STRAP number is 19-46-24-06-0000H.0300; and

WHEREAS, the subject application and plans have been reviewed by the Lee County Department of Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures.

NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for administrative approval for Consumption on Premises is APPROVED.

Approval is subject to the following conditions:

1. The consumption on premises (4 COP SRX) shall be in conjunction with a Group III, restaurant; and
2. There shall be no outdoor sales, serving or consuming of alcoholic beverages.

DULY SIGNED this 1st day of November, A.D., 1993.

BY: 
Bryan J. Kelner, Zoning Manager
Division of Zoning
Department of Community Development

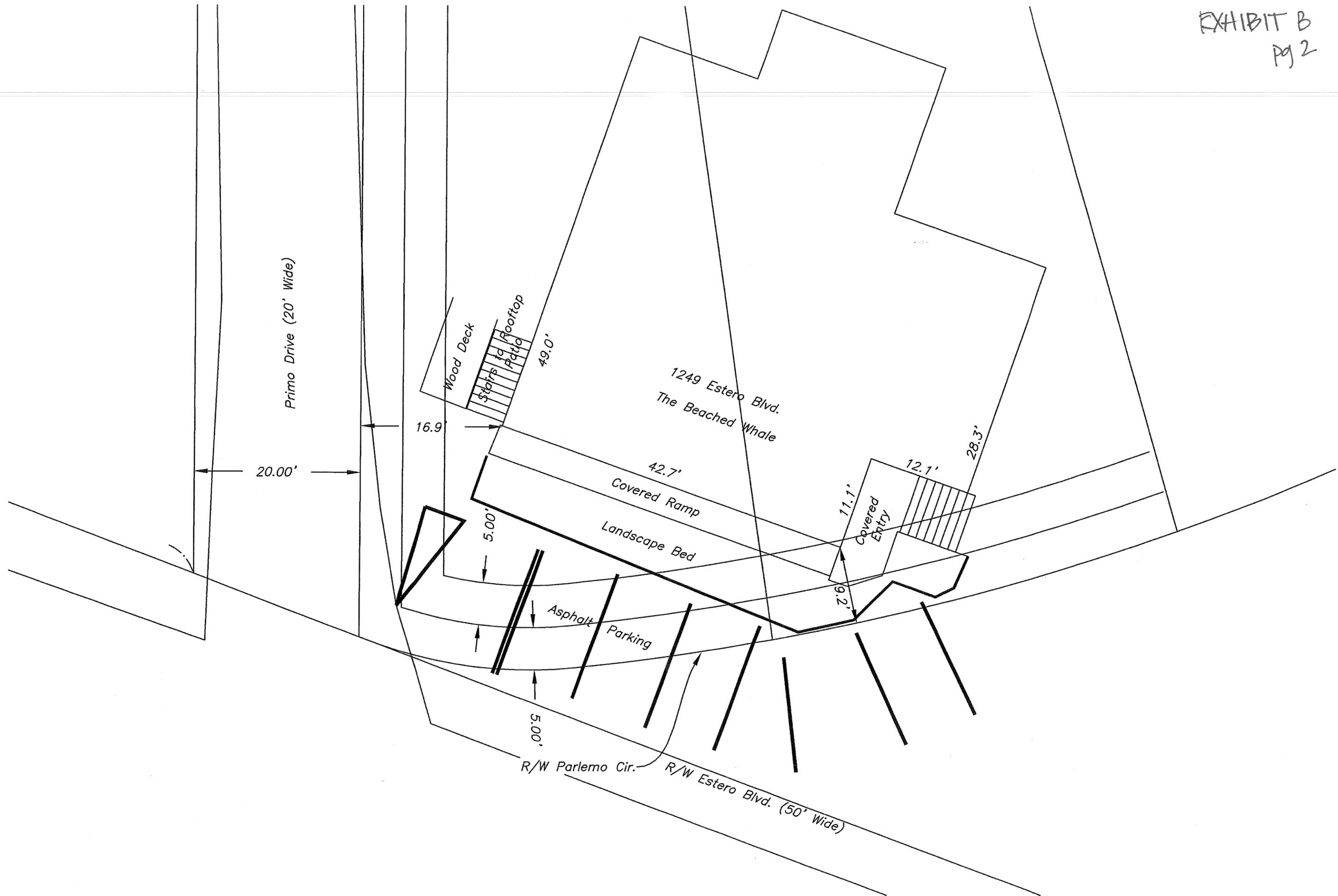
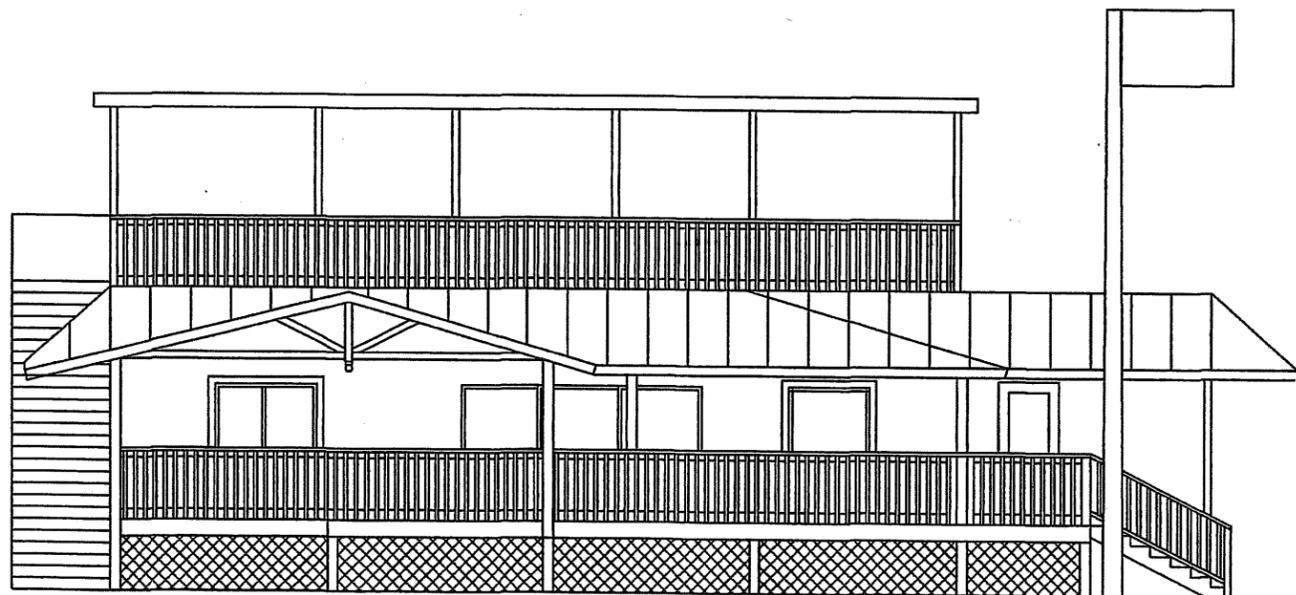
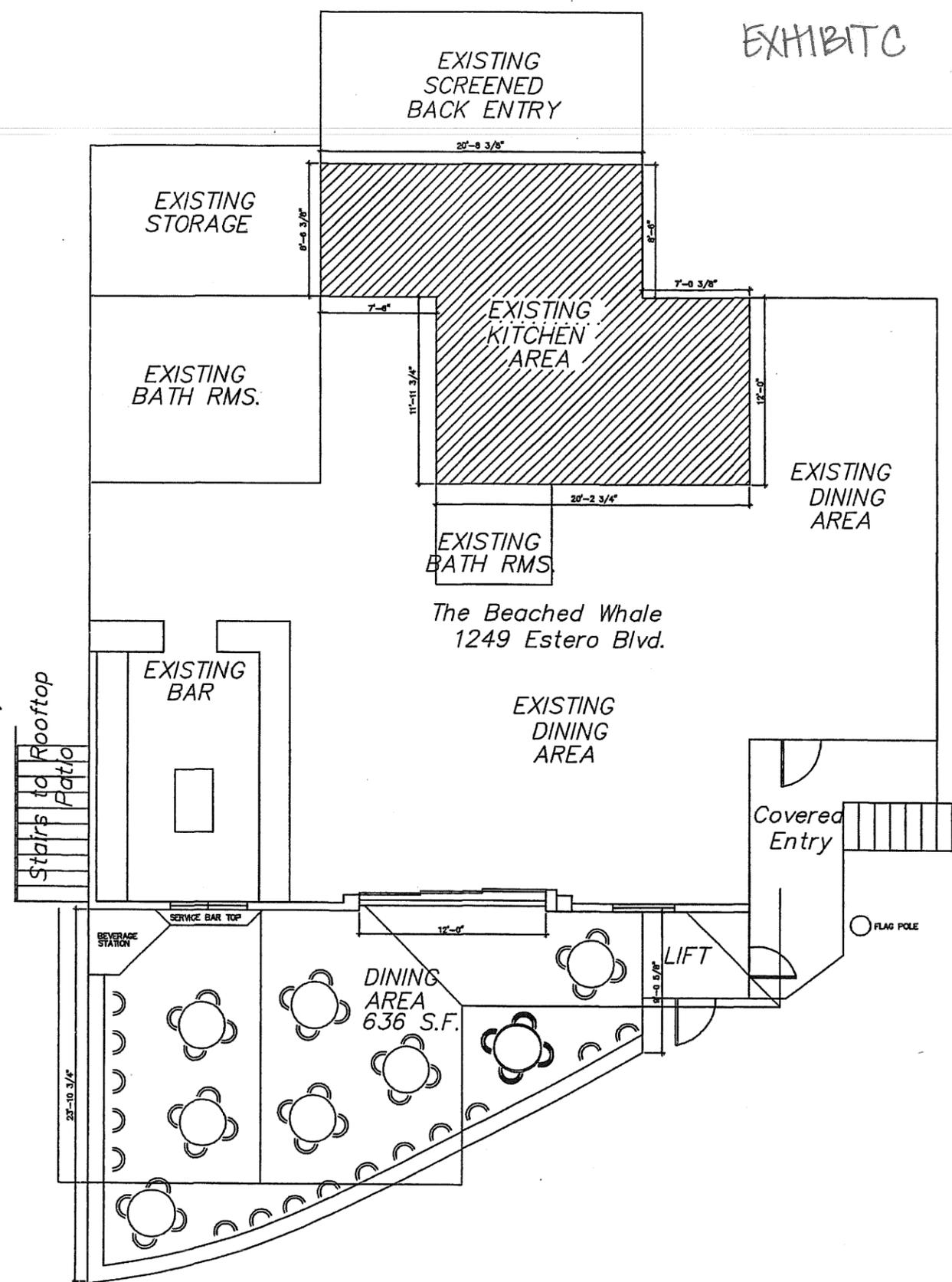


EXHIBIT C

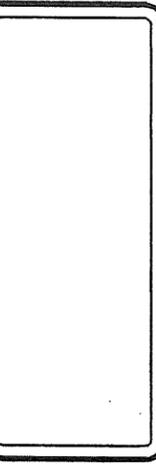
REVISIONS



FRONT ELEVATION



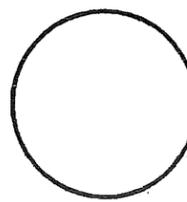
The Beached Whale
1249 Estero Blvd.



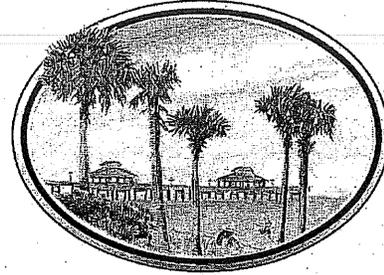
BEACHED WHALE
FORT MYERS BEACH, FLORIDA 33931

drawn by D.M.E.
checked by
date
scale
job no. JOB

SHEET NO.



TOWN OF FORT MYERS BEACH



MEMO

DATE: March 22, 2013
 TO: Leslee Chapman, Community Development Department
 FROM: Cathie Lewis, Public Works Director *C Lewis*
 SUBJECT: SEZ13-0001 – Special Exception – Beached Whale

Below are PW comments on the above subject zoning application.

Zoning Application Review:

1. The sketched in survey provided with the application depicts the construction limits of the proposed improvement to extend to the edge of the right-of-way. The project plan drawing provided with the application shows a roof covering most of the extension area. There are portions of the roof that are depicted as extending into the public right-of-way of Palermo Circle and possibly Primo Dr.

Public Works cannot support extending a roof overhang into the public right-of-way. Should the zoning request be approved this should be included as a stipulation and should require that an As-Built survey be required to verify this.

2. The applicant is seeking approval of an outdoor seating area where some current site parking is located. The area is currently impervious with water shedding from the area to Palermo Circle, Estero Blvd. and Primo Dr.

Applicant should create an impervious area or retention area under the proposed deck structure to capture as much stormwater as possible.

3. The application depicts a handicapped parking space that extends into the public right-of-way.

This parking space should be relocated to a location on the property or applicant may enter into an agreement with the Town to allow utilization of the right-of-way for this parking purpose.

This application comment memorandum should in no way constitute final comments or approval. As the application process continues, it will be necessary for PW to provide additional review to Community Development.

Please let me know if you have any questions regarding this.

(Sent via Trakit)



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, eleven (11) copies and one digital/electronic copy* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application.

PROJECT NUMBER: _____ DATE: _____

Site Address: 1249 ESTERO BLVD, FT. MYERS BEACH

STRAP Number: 19-46-29-W4-0060H, 0300

Applicant: MARTY HARRITY Phone: _____

Contact Name: ERIC BECK Phone: 239-233-3906

Email: ERIC@BEACHEDWHALE.COM Fax: _____

Current Zoning District: DOWN TOWN

Future Land Use Map (FLUM) Category: N/A

FLUM Density Range: N/A Platted Overlay: YES NO

ACTION REQUESTED

SUPPLEMENTAL FORM REQUIRED

- | | |
|---|--------------------------|
| <input checked="" type="checkbox"/> Special Exception | PH-A |
| <input type="checkbox"/> Variance | PH-B |
| <input type="checkbox"/> Conventional Rezoning | PH-C |
| <input type="checkbox"/> Planned Development <input type="checkbox"/> Commercial <input type="checkbox"/> Residential | PH-D |
| <input type="checkbox"/> Master Concept Plan Extension | PH-E |
| <input type="checkbox"/> Appeal of Administrative Action | PH-F |
| <input type="checkbox"/> Vacation of Platted Right-of-way and Easement | PH-G |
| <input type="checkbox"/> Other - cite LDC Section: _____ | attach on separate sheet |

F

PART I - General Information

A. **Applicant***: MARTY HARRITY Phone: 239-233-3906

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: P.O. BOX 167 SANIBEL, FL. 33957

Email: ERIC @ BEACHED WHALE . COM Fax: _____

Contact Name: ERIC BECK Phone: 239-233-3906

B. **Relationship of Applicant to subject property:**

- | | | |
|---|---|--|
| <input type="checkbox"/> Owner* | <input type="checkbox"/> Land Trust* | <input type="checkbox"/> Partnership* |
| <input checked="" type="checkbox"/> Corporation* | <input type="checkbox"/> Association* | <input type="checkbox"/> Condominium* |
| <input type="checkbox"/> Subdivision* | <input type="checkbox"/> Timeshare Condo* | <input type="checkbox"/> Contract Purchaser* |
| <input type="checkbox"/> Authorized Representative* | <input type="checkbox"/> Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. **Authorized Agent(s)**. Please list the name of Agent authorized to receive correspondence Agents

Name: DAVID M. EASTERBROOK Phone: 239-980-3091

Address: 123 BAYVIEW AVE FMB, FL 33931

Email: FIVE BEACH BUMS @ AOL.COM Fax: _____

D. **Other Agent(s)**. Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: ERIC BECK Phone: 239-233-3906

Address: 1299 ESTERO BLVD FMB FL 33931

Email: ERIC @ BEACHED WHALE . COM Fax: _____

Name: MARTY HARRITY Phone: _____

Address: P.O. BOX 167 SANIBEL FL 33957

Email: _____ Fax: _____

Name: MARK MARINELLO Phone: _____

Address: P.O. BOX 167 SANIBEL FL 33957

Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- Special Exception
- Variance from LDC Section _____ - _____
- Conventional Rezoning from _____ to _____
- Planned Development
 - Rezoning from _____ to Commercial PD Residential PD
 - Amendment. List the project number: _____
 - Extension/reinstatement of Master Concept Plan. List project number: _____
- Appeal of Administrative Action
- Vacation Right-of-Way Easement
- Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

- Code Section: _____ Description: _____

- Code Section: _____ Description: _____

- Code Section: _____ Description: _____

PART IV - Property Ownership

- Single Owner (individual or husband and wife)
 - Name: _____ Phone: _____
 - Mailing Address: _____
 - Email: _____ Fax: _____

- Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)
 - Complete Disclosure of Interest Form (see below)
 - Attach list of property owners as Exhibit 4-1
 - Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)
 - For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 19-46-24-W4-00604.0300

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 Ownership
<i>N/A</i>	

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 of Stock
<i>MARK MARINELLO P.O. BOX 167</i>	<i>15%</i>
<i>SANIBEL FL 33957</i>	
<i>MARTY HARRITY P.O. BOX 167</i>	<i>85%</i>
<i>SANIBEL FL 33957</i>	

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

N/A	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

N/A	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

N/A	_____

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
	N/A

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature

Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on _____ (date) by _____ (name of person providing oath or affirmation), who is personally known to me or who has produced _____ (type of identification) as identification.

(SEAL)

Signature

Printed Name

PART V - Property Information

A. Legal Description:

STRAP: 19-46-24-W4-0060H,0300
Property Address: 1249 ESTERO BLVD FMB, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? No. Attach a legible copy of the legal description as Exhibit 5-1.

Yes. Property identified in subdivision: VENETIAN GARDENS

Book: 2414 Page: 2433 Unit: _____ Block: H Lot(s): 29,30,31,32

B. Boundary Survey:

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. 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. Attach and label as Exhibit 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 155 feet
Depth (please provide an average width if irregular in shape) 132 feet
Frontage on street: 201 feet. Frontage on waterbody: N/A feet
Total land area: 18,738 acres square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

LEFT AT SKY BRIDGE CORNER OF PALERMO
CIRCLE AND ESTERO BLVD.

Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

- There are no deed restrictions and/or covenants on the subject property.
 A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.
 A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.
- Attach a map showing the surrounding property owners as Exhibit 5-7.
- Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| <input type="checkbox"/> Low Density | <input type="checkbox"/> Marina |
| <input type="checkbox"/> Mixed Residential | <input type="checkbox"/> Recreation |
| <input checked="" type="checkbox"/> Boulevard | <input type="checkbox"/> Wetlands |
| <input type="checkbox"/> Pedestrian Commercial | <input type="checkbox"/> Platted Overlay |

H. Zoning (see official Zoning Map):

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

VARIANCE REPORT

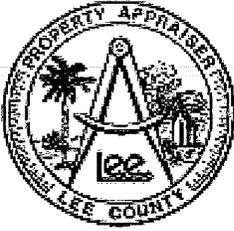
1/28/2013

Subject Parcels: 1 Affected Parcels: 87 Buffer Distance: 500 ft



19-46-24-W4-0060H.0300

240 180 120 60 0 240 Feet



Lee County Property Appraiser

Kenneth M. Wilkinson, C.F.A.

GIS Department / Map Room

Phone: (239) 533-6159 • Fax: (239) 533-6139 • eMail: MapRoom@LeePA.org

VARIANCE REPORT

Date of Report: 1/28/2013 4:07:52 PM
Buffer Distance: 500 ft
Parcels Affected: 87
Subject Parcels: 19-46-24-W4-0060H.0300

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION
HUNTINGBURG PARTNERS LTD TODD MCGEE STE 1203 5294 SUMMERLIN COMMONS WAY FORT MYERS, FL 33907	24-46-23-W3-00006.0000 1133-1155 ESTERO BLVD/FIFTH ST FORT MYERS BEACH FL 33931	BUSINESS CTR PHILLIPS PB 9 PG 9 LOTS 10 THRU 15 + OR 587/198 LESS R/W 2353/3036
BROADWAY INVESTMENT PARTNERS 55 E LONG LAKE RD #204 TROY, MI 48085	24-46-23-W3-00009.0000 1160 ESTERO BLVD FORT MYERS BEACH FL 33931	PARL IN SE 1/4 OF SE 1/4 SEC 24 TWP 46 RGE 23 DESC IN OR 1305 PG 0806
ESTERO BEACH HOLDINGS LLC 1429 COLONIAL BLVD STE 201 FORT MYERS, FL 33907	24-46-23-W3-00011.0000 1154 ESTERO BLVD FORT MYERS BEACH FL 33931	BEG SW COR BLK E CRESCENT PARK ADD ON E LI SEC 24 S ALG E LI SEC 53.24 FT TO S
VAN BURGESS ROBERT PO BOX 2717 FORT MYERS BEACH, FL 33932	19-46-24-W4-00600.Y000 125/127 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK Y PB 6 PG 70 ALL BLK Y EXC NLY 11 FT
BAKER HENRY B + RR 3 BOX 114 SALLISAW, OK 74955	19-46-24-W4-0060A.0300 1403 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK A PB 6 PG 70 LOTS 30 31 LESS W 12 FT
ESH LUCINDA JULIA KELLER TR 223 CAROLINA AV FORT MYERS BEACH, FL 33931	19-46-24-W4-0060A.0320 1401 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK A PB 6 PG 70 LOTS 32 + W 12 FT LOT 31
AULLS FRANK W JR + TRICIA M 1212 SW 53 TERR CAPE CORAL, FL 33914	19-46-24-W4-0060A.0330 1351 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK A PB 6 PG 70 LOT 33
WILCOX LANCE 1339 SANTOS RD FORT MYERS BEACH, FL 33931	19-46-24-W4-0060A.0340 1339 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.A PB 6 PG 70 LOT 34
PARILLA DAVID R 1335 SANTOS RD FORT MYERS BEACH, FL 33931	19-46-24-W4-0060A.0350 1335 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK A PB 6 PG 70 LOT 35
ABRAMOFF LAWRENCE + GLORIA 34 CHILTERN HILL DR WORCESTER, MA 01602	19-46-24-W4-0060A.0360 126 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK A PB 6 PG 70 LOT 36 + S 1/2 OF BLK X LESS THE N 20 FT
WATTS SHEILA A TR + PO BOX 698 FORT MYERS, FL 33902	19-46-24-W4-0060A.0370 1321 SANTOS RD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.A PB 6 PG 70 LOT 37
LKLB OF FLORIDA INC 1400 ESTERO BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0060B.0070 1479 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOTS 7 + 8 + E 1/2 OF LOT 9 + 28 + 29 + VAC RD R/W OR 553 PG 797
PRIMEAU NORMAN L TR 950 SAN CARLOS CT FORT MYERS BEACH, FL 33931	19-46-24-W4-0060B.0100 1397 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 W 1/2 LOT 9 LOTS 10 + 11
PRIMEAU NORMAN L TR 950 SAN CARLOS DR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060B.0120 1365/1375 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOT 12

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION
LANI KAI LP ROBERT G CONIDARIS 1400 ESTERO BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0060B.0130 1345 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOT 13
LANI KAI LP ROBERT G CONIDARIS 1400 ESTERO BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0060B.0140 1331 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOT 14
LANI KAI LP ROBERT G CONIDARIS 1400 ESTERO BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0060B.0150 1325 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOTS 15
7-ELEVEN INC TAX DEPT 10319 2711 N HASKELL AVE DALLAS, TX 75204	19-46-24-W4-0060B.0160 1301 ESTERO BLVD FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK B PB 6 PG 70 LOTS 16 + 17
TEZAK WAYNE P + HELEN C 50 CHAPEL ST APT 4 FORT MYERS BEACH, FL 33931	19-46-24-W4-0060E.0030 505 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK E PB 6 PG 70 LOTS 3 + 4
KLINE LYLE L TR 371 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060E.0050 551 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK E PB 6 PG 70 LOT 5
KLINE LYLE L TR 371 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060E.0060 561 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK E PB 6 PG 70 LOT 6
JOTCAR INC 2110 PONDELLA RD CAPE CORAL, FL 33909	19-46-24-W4-0060E.0070 571 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK E PB 6 PG 70 LOT 7
BARNES BRYCE E + SONIA R 581 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060E.0080 581 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK E PB 6 PG 70 LOT 8 + LOT PT 9
DACRE ALBERT J 130 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060E.0090 130 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS PB 6/70 BLK E S 1/2 OF LOT 9 + ALL OF BLK X LESS S 20 FT
HENNESSEY PATRICIA J + 460 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060F.0010 460 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK F PB 6 PG 70 LOT 1
WEBER THOMAS L L/E 552 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060F.0020 552 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK F PB 6 PG 70 LOT 2
WARD HERBERT H + MARIE A TR 4224 REAS LN NEW ALBANY, IN 47150	19-46-24-W4-0060F.0030 580 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK F PB 6 PG 70 LOT 3
SPECTRUM MARKETING 165 ANCHORAGE ST FORT MYERS BEACH, FL 33931	19-46-24-W4-0060F.0040 584/586 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK F PB 6 PG 70 LOT 4
SPECTRUM MARKETING 165 ANCHORAGE ST FORT MYERS BEACH, FL 33931	19-46-24-W4-0060F.0050 588/590 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK F PB 6 PG 70 LOT 5
FITE DAVID MITCHELL + JULIE H 1314 RIVERVIEW AVE GLENWOOD SPRINGS, CO 81601	19-46-24-W4-0060F.0270 220 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK F PB 6 PG 70 LOT 27
FMB LLC 19806 PLATTE VIEW RD GRETNA, NE 68028	19-46-24-W4-0060F.0280 212 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK F PB 6 PG 70 LOT 28
GALLO CARL L + KATHLEEN L 7840 W 180TH TER MIAMI, FL 33157	19-46-24-W4-0060G.0120 221 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK G PB 6 PG 70 LOTS 12 + 13
HANNUM LEWIS G JR 211 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060G.0140 211 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK G PB 6 PG 70 LOT 14
MURAC JULIA A 201 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060G.0150 201 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK G PB 6 PG 70 LOTS 15 + 16

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION
DAY BILLY WAYNE 3708 SHANNON RUN TRL LOUISVILLE, KY 40299	19-46-24-W4-0060G.0170 155 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK G PB 6 PG 70 LOT 17
LUMP THOMAS F + ANN C 145 PALERMO CIR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060G.0180 145 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.G PB 6 PG 70 LOT 18
S + K SLOMSKI LLC 24265 TURNBERRY CT NAPERVILLE, IL 60564	19-46-24-W4-0060G.0190 139 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK G PB 6 PG 70 LOT 19 NLY 11 FT BLK Y
LODS LANA LANIE 200 ROSA LN LAFAYETTE, IN 47905	19-46-24-W4-0060H.0170 190 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 17
RILEY CHRISTOPHER M + SUSAN K 180 PRIMO DR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060H.0180 180 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 18
RILEY SUSAN K TR 180 PRIMO DR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060H.0190 170 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.H PB 6 PG 70 LOTS 19
BAILEY JAMES P + LANA C 162 PRIMO DR FORT MYERS BEACH, FL 33931	19-46-24-W4-0060H.0200 162 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LT 20
TOWNLEY MARK A PO BOX 2442 FORT MYERS BEACH, FL 33932	19-46-24-W4-0060H.0220 150 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOTS 21 + 22
NEUMANN SHEILA A 17350 WEST CARNEGIE CIR UNIT 304A FORT MYERS, FL 33967	19-46-24-W4-0060H.0230 140 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 23
GRIFFIN MICHAEL J + SANDRA 1065 WEEPING WILLOW WAY HOLLYWOOD, FL 33019	19-46-24-W4-0060H.0240 136 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 24
HIGHLEY JAY E + MARY B 13387 MARJAC WAY MC CORDSVILLE, IN 46055	19-46-24-W4-0060H.0250 124 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 25
MILLER JOHN T + MARTA R 314 W 4TH ST #400 BLOOMINGTON, IN 47404	19-46-24-W4-0060H.0260 122 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 PT LOT 26
KWSH RE LLC 2601 MULBERRY AVE MUSCATINE, IA 52761	19-46-24-W4-0060H.026A 120 PRIMO DR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 PT LOTS 26 31 32
ALEXANDER JAMES M TR 18 RIVERVIEW RD MONMOUTH BEACH, NJ 07750	19-46-24-W4-0060H.0270 121 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK.H PB 6 PG 70 LOT 27
DOLID PETER M + JILL B 1429 JAMAICA DR SANIBEL, FL 33957	19-46-24-W4-0060H.0280 117 PALERMO CIR FORT MYERS BEACH FL 33931	VENETIAN GARDENS BLK H PB 6 PG 70 LOT 28 + PT LOTS 26 + 29
GANIM GEORGE W + JOSEPHINE 4666 MAIN ST BRIDGEPORT, CT 06606	19-46-24-W4-0070D.001B 1450 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT BEACH BLK.D PB 4 PG 45 WLY 43 FT LOTS 1 + 4
LANI KAI LP ROBERT G CONIDARIS 1400 ESTERO BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0070D.0020 1400 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT BEACH PB 4 PG 45 BLKS D + E + VAC R/W DESC OR 1293 PG 1208
COLORADO EAST LLC DANA GOSFORD 4233 WARREN RD FRANKLIN, TN 37067	19-46-24-W4-0070F.0010 1250 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK LTS 1 + 2 + ESTRY 2.5 FT LT 3 + CRESCENT BEACH LTS 1-5 BLK F LESS ESTRY 45FT OF NRTHLY 2.7 LT 3
GIL JUAN C 936 STANFORD SUGAR GROVE, IL 60554	19-46-24-W4-0070F.001A 1270 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT BEACH BLK F PB 4 PG 45 PT LOTS 1 2 & 3 DESC IN OR 1319 PG 1459
GANIM PROPERTIES LLC 4666 MAIN ST BRIDGEPORT, CT 06606	19-46-24-W4-0140A.0010 1240 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK PB 4 PG 39 BLK A LOTS 1 + 2 + 8 + 9

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION
GANIM PROPERTIES LLC 4666 MAIN ST BRIDGEPORT, CT 06606	19-46-24-W4-0140A.001A 200 CANAL ST FORT MYERS BEACH FL	CRESCENT PARK PB 4 PG 39 BLK C LOT 3 LESS E 2.5 FT
VANSELOW SCOTT + 1204 ESTERO BLVD UNIT 6 FORT MYERS BEACH, FL 33931	19-46-24-W4-0140A.0030 1204/1206 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK BLK A PB 4 PG 39 LOTS 3 THRU 7
SUMMER DAZE LP 510 BETHUNE ST PETERBOROUGH, ON K9H 3Z3 CANADA	19-46-24-W4-0140B.0010 1188/1190 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK BLK B PB 4 PG 39 LOT 1
SUMMER DAZE LP 510 BETHUNE ST PETERBOROUGH, ON K9H 3Z3 CANADA	19-46-24-W4-0140B.0020 1172/1174 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK BLK B PB 4 PG 39 LOTS 2 + 3 + 6
SUMMER DAZE LP 510 BETHUNE ST PETERBOROUGH, ON K9H 3Z3 CANADA	19-46-24-W4-0140B.0040 231 CANAL ST FORT MYERS BEACH FL 33931	CRESCENT PARK BLK B PB 4 PG 39 LOT 4
SUMMER DAZE LP 510 BETHUNE ST PETERBOROUGH, ON K9H 3Z3 CANADA	19-46-24-W4-0140B.0050 221 CANAL ST FORT MYERS BEACH FL 33931	CRESCENT PARK BLK B PB 4 PG 39 LOT 5
SUMMER DAZE LP 510 BETHUNE ST PETERBOROUGH ONTARIO, K9H3Z3 CANADA	19-46-24-W4-0140B.0070 1160 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK BLK B PG 4 PG 39 LTS 7 THRU 9 + LAND DESC IN OR 1305 PG 0796
ESTERO SILVER SANDS LLC 1207 ESTERO BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0150D.0050 1207 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LOTS 1 THRU 5
BISCHOFF JAMES A + JEAN B TR 21570 MADERA RD FORT MYERS BEACH, FL 33931	19-46-24-W4-0150D.0060 141 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 6 + VAC R/W + LAND ADJ CANAL
GREENE JEFFREY W + 6040 BAYVIEW RD SAINT LEONARD, MD 20685	19-46-24-W4-0150D.0070 143 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 7 + VAC R/W + LAND ADJ CANAL
PATTON THOMAS D + CHRISTINE M 153 PRIMO DR FORT MYERS BEACH, FL 33931	19-46-24-W4-0150D.0080 153 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 8 + VAC R/W + LAND ADJ CANAL
BOGGS RICHARD A + MARGARET A 163 PRIMO DR FORT MYERS BEACH, FL 33931	19-46-24-W4-0150D.0090 163 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 9 + VAC R/W + LAND ADJ CANAL
BRIODY HUGH T + SUSAN S 167 PRIMO DR FORT MYERS BEACH, FL 33931	19-46-24-W4-0150D.0100 167 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 10 + VAC R/W + LAND ADJ CANAL
TOWNLEY ARTHUR JAMES III PO BOX 2452 FORT MYERS BEACH, FL 33932	19-46-24-W4-0150D.0110 171 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LT 11 + VAC R/W + LAND ADJ CANAL
TOWNLEY ARTHUR J III PO BOX 2452 FORT MYERS BEACH, FL 33932	19-46-24-W4-0150D.0120 191 PRIMO DR FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK D PB 4 PG 46 LOTS 12 + VAC R/W + LAND ADJ CANAL
MALLOUS JAMES + 309 DOOLITTLE ST ORLANDO, FL 32839	19-46-24-W4-0150E.0010 1161/1165 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 PT LTS 1 + 2 OR0545/43LESR/W 2353/3036
CERMAKS SURF CLUB LLC 1167 ESTERO BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0150E.001A 1167 ESTERO BLVD FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 BEG ON NLY SI CO RD 80 FT
BRIDGE GEORGE E + KIM ANN 15831 BRIARCLIFF LN FORT MYERS, FL 33912	19-46-24-W4-0150E.0030 108/116 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LT 3
REICH JOHN R + 120 CRESCENT ST FORT MYERS BEACH, FL 33931	19-46-24-W4-0150E.0040 118/122 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LT 4 + S10 FT LOT 5 LES R/W2353/3036

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION
URSOLEO JAY F + KARIN M 1/2 + 9017 LIGON CT FORT MYERS, FL 33908	19-46-24-W4-0150E.0060 150 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LTS 6 + 7 + 32.67 FT ADJ + N 40 FT OF LOT 5 + VAC + ADJ CANAL LESS R/W OR2353/3036
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0150E.0080 170 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LT 8 + VAC R/W+ LAND ADJ LESR/WOR2353/3036
RICHARD JOHN W L/E 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	19-46-24-W4-0150E.0090 202 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 LOTS 9 10 + VAC + LAND ADJ LESR/W2353/3036
CRESCENT SHORE CONDO ASSOC PO BOX 2990 FORT MYERS BEACH, FL 33932	19-46-24-W4-02600.00CE CRESCENT SHORE C/E FORT MYERS BEACH FL	A CONDO LOCATED IN SEC 19 TWP 46 RGE 24 AS DESC IN OR 1464 PG 445 COMMON ELEMENTS
SHELLS COM LLC MICHAEL LEE 12771 AVIANO DR NAPLES, FL 34105	19-46-24-W4-02600.1010 1300 ESTERO BLVD 101 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNITS 101 102 + 103
CZAPLA MIKE J 1300 ESTERO BLVD UNIT 104 FORT MYERS BEACH, FL 33931	19-46-24-W4-02600.1040 1300 ESTERO BLVD 104 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 104
CZAPLA MIKE J 1300 ESTERO BLVD UNIT 104 FORT MYERS BEACH, FL 33931	19-46-24-W4-02600.1050 1300 ESTERO BLVD 105 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 105
PFÄFFINGER ELMER T + MARY J + 230 WESTVIEW ST HOFFMAN ESTATES, IL 60169	19-46-24-W4-02600.1060 1300 ESTERO BLVD 106 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 106
JOHNSON STEVEN D + NANCY 637 WEST 8TH ST MANKATO, MN 56001	19-46-24-W4-02600.2010 1300 ESTERO BLVD 201 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 201
HECK LLC 17483 OLD HARMONY DR APT 202 FORT MYERS, FL 33908	19-46-24-W4-02600.2020 1300 ESTERO BLVD 202 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 202
CONANT GORDON A + DONNA K 8122 S FOREST HILL CIR FRANKLIN, WI 53132	19-46-24-W4-02600.2030 1300 ESTERO BLVD 203 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 203
DENNIS R + CYNTHIA L LOKEN TRU 106 ICHABOD LN MANKATO, MN 56001	19-46-24-W4-02600.2040 1300 ESTERO BLVD 204 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 204
LANDOLFI STEVEN J 22 VETO ST PROVIDENCE, RI 02908	19-46-24-W4-02600.2050 1300 ESTERO BLVD 205 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 205
DENNIS R + CYNTHIA L LOKEN TRU 106 ICHABOD LN MANKATO, MN 56001	19-46-24-W4-02600.2060 1300 ESTERO BLVD 206 FORT MYERS BEACH FL 33931	CRESCENT SHORE CONDO OR 1464 PG 445 UNIT 206

PART VII

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, MARTY HARRITY (name), as President (title) of THE BEACHED WHALE INC. (company), 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 County 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 supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

THE BEACHED WHALE INC.

Name of Entity (corporation, partnership, LLP, LLC, etc)

Marty Harity
Signature

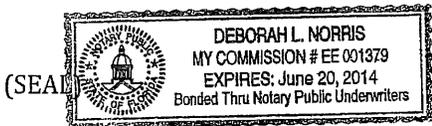
Pres/owner
Title

MARTY J HARRITY
Typed or Printed Name

2/6/13
Date

STATE OF FLORIDA)
COUNTY OF LEE)

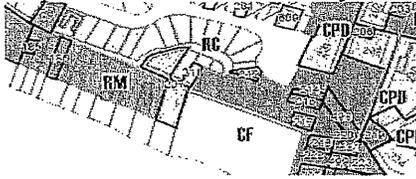
The foregoing instrument was sworn to (or affirmed) and subscribed before me on 2/6/13 (date) by MARTY HARRITY (name of person providing oath or affirmation), who is personally known to me or who has produced _____ (type of identification) as identification.



Deborah L. Norris
Signature

Deborah L. Norris
Printed Name

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: <i>THE BEACHED WHALE INC.</i>
Authorized Applicant: <i>MARTY HARRITY</i>
LeePA STRAP Number(s): <i>19-46-24-W4-0060H, 0300</i>

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

Requested Action:

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

PART I
Narrative Statements

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

THE BEACHED WHALE INC. IS REQUESTING 47 ADDITIONAL SEATS IN A 636 SF. COVERED PORCH LOCATED ON ESTERO BLVD. AT THIS TIME THE BEACHED WHALE IS APPROVED FOR 250 SEATS. THE BEACHED WHALE INC. IS REQUESTING AN ADDITIONAL 50 SEATS COVERED AND OUTSIDE ON A RAISED PORCH WITH THE SERVICE OF FOOD AND ALCOHOL FROM THE HRS. OF 7:00 AM — 2:00 PM 7 DAYS A WEEK. REQUESTED ALSO IS ACUSTICAL MUSIC FROM 11:00 AM. TO 10:00 PM MONDAY THRU FRIDAY

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:

(A) THE BEACH COMP PLAN ENCOURAGES OUT DOOR SEATING IN THE DOWNTOWN AREA ON ESTERO BLVD. SEC 34-6786(3) THE BEACHED WHALE INC. FEELS THIS PROPERTY MEETS SEC. 34-88 SPECIAL EXCEPTIONS E - I.

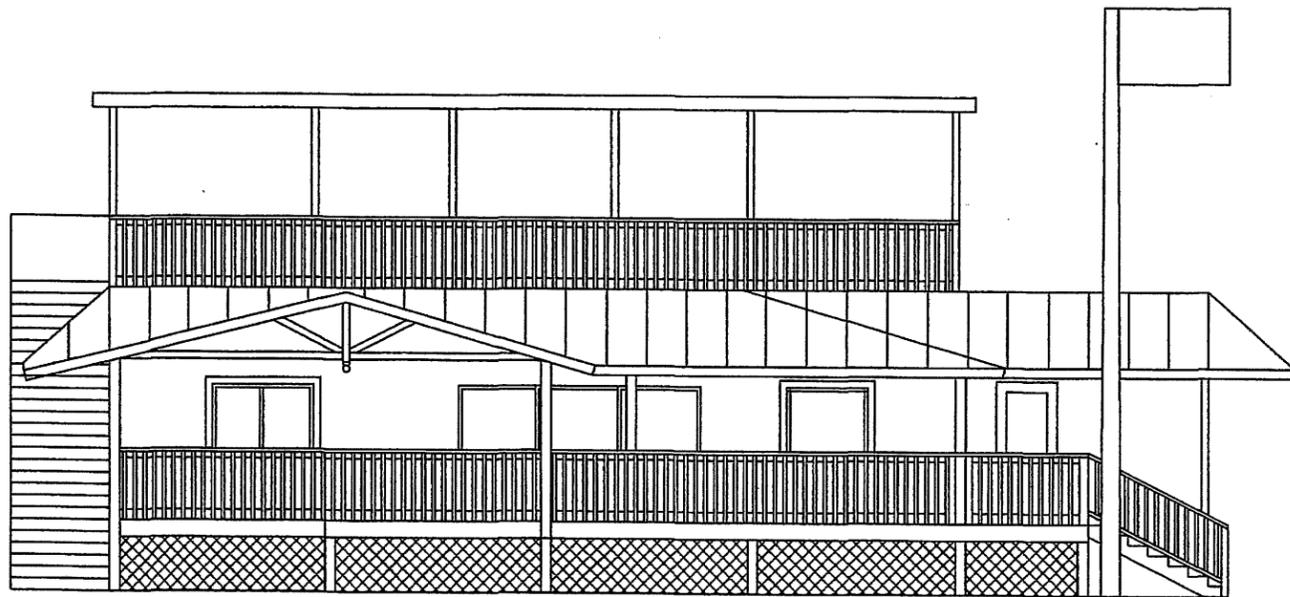
(E) REQUEST IS CONSISTANT WITH THE BEACH COMP PLAN.

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

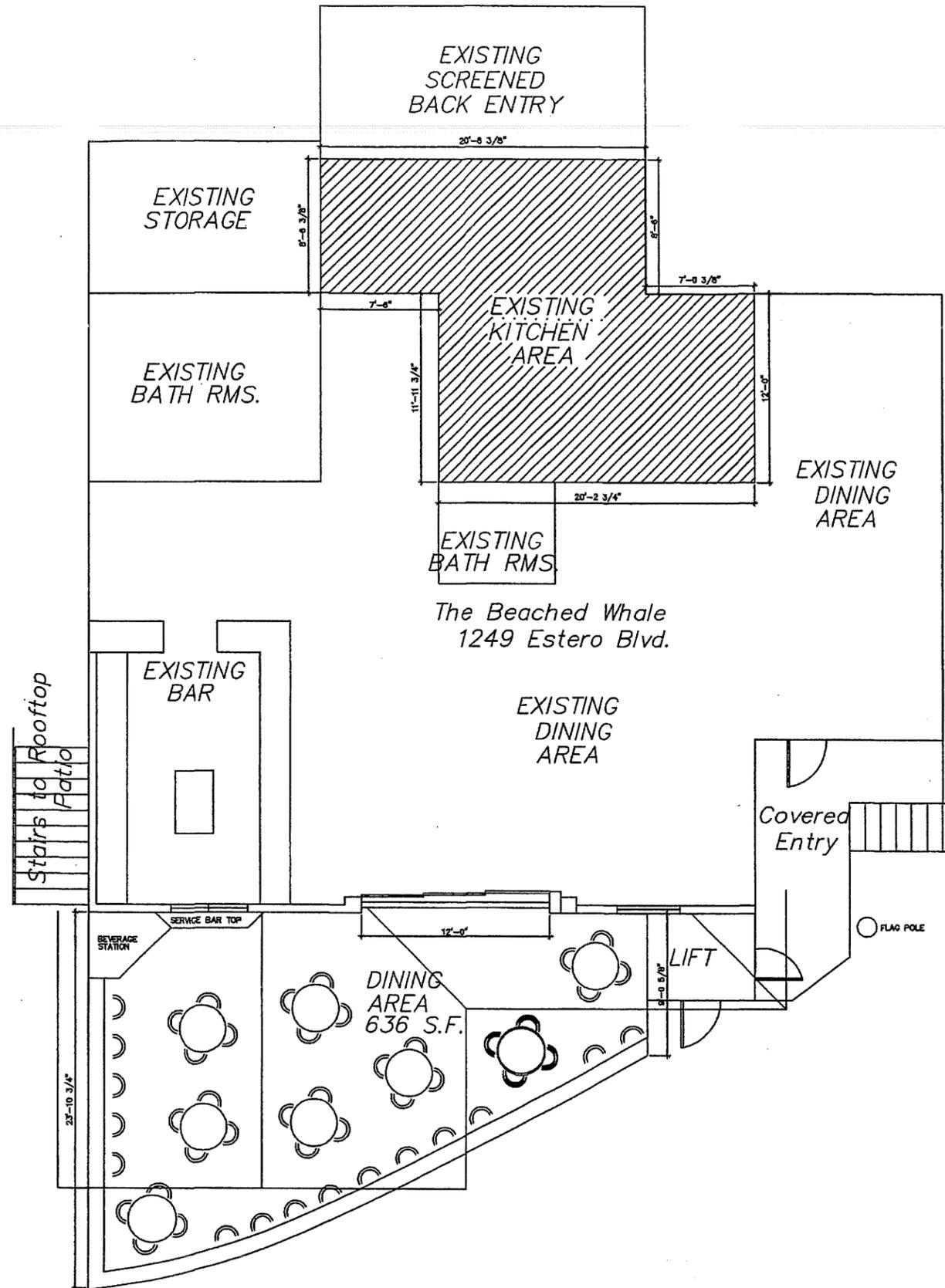
(G) THERE WILL BE NO ENVIRONMENTAL IMPACT TO ADJACENT PROPERTIES.

(H) NO IMPACT

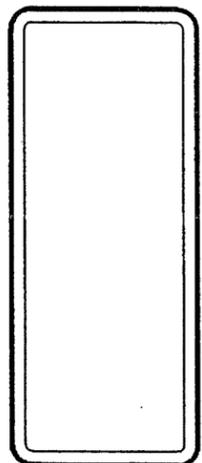
(I) THE REQUESTED USE UPHOLDS THE BEACH COMP PLAN.



FRONT ELEVATION



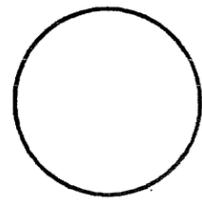
REVISIONS

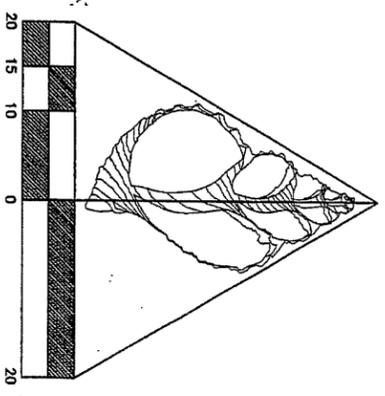


BEACHED WHALE
FORT MYERS BEACH, FLORIDA 33931

drawn by D.M.E.
checked by
date
scale
job no. JOB

SHEET NO.





This Area Included in Record Description of 1249 Estero Blvd. AND 120 Primo Drive

Found Concrete Monument X Top (Old)
Under Concrete for Fence Post

26

Found 5/8" rebar LB 6569

Found 5/8" rebar LB 7075
Northeast Corner Lot 29

Commencement Corner Lot 32

Found Concrete Monument X Top (Old)

Found Concrete Monument X Top (Old)
120 Primo Drive
OR 990, Page 50
Doc.# 2005000008100

Concrete Trash Enclosure

Storage Unit

PK Nail and Disk
LB 4919 R/W

Estero Boulevard (50' R/W)
Found PK Nail and Disk
LB 4919 R/W

Palermo Circle (50' R/W)
(plotted as Palermo Circle)

R= 310.0'
D= 32°46'45"
L= 177.36
Ch= N66°55'38"E, 174.5

R= 76.69
D= 18°22'18"
L= 24.59
Ch= S87°29'24"E, 24.49

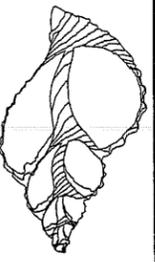
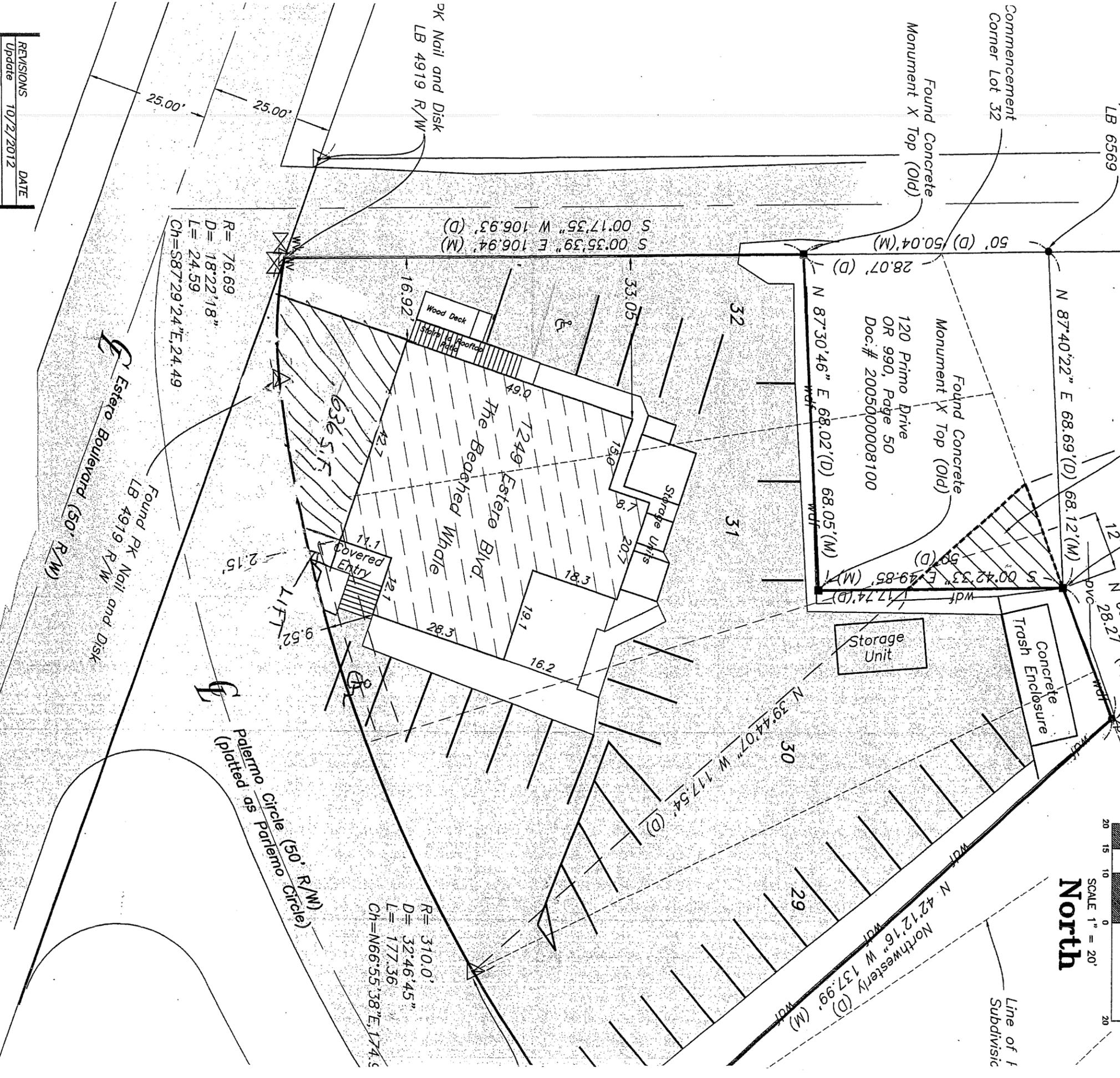
S 00°35'39" E 106.94' (M)
S 00°17'35" W 106.93' (D)

50' (D) 50.04' (M)
28.07' (D)

N 87°30'46" E 68.02' (D) 68.05' (M)

N 69°21'23" E
28.27' (M)

N 42°12'16" W 137.99' (M)
Northwesterly (D)
N 39°44'07" W 117.54' (D)



REVISIONS	DATE
Update	10/2/2012

JOB #96127
Valid only with embossed seal

I hereby certify that this survey was made under my responsible charge and meets the minimum technical standards as set forth by the Florida Board of Professional Land Surveyors in Chapter 51-17.051 of the Florida Administrative Code, pursuant to Section 472.0027 of the Florida Statutes.

By: *Andrew W. Johnson*, PSM 6256
Not Valid Without Signature and Raised Seal
Date Signed: 10/2/12

SANIBEL SURVEYS
2410 Palm Ridge Road
Sanibel Florida 33957
472-0095
sanibelsurveys@gmail.com
Licensed Business No. 7443