

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2013-012
SEZ2013-0002 Yucatan Beach Stand

WHEREAS, Beverly Grady, Esq, authorized agent for Stingrays Raw Bar, Inc. 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 190± square feet of new deck at the side of the existing building; and

WHEREAS, the subject property is located at 250 Old San Carlos Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 24-46-23W3-00204.0010 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 17, 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 190± square feet of new deck at the side of the existing building subject to the following conditions:

RECOMMENDED CONDITIONS OF APPROVAL:

1. *Outdoor music or similar entertainment is prohibited. Indoor music and/or similar entertainment is restricted to occur only within the enclosed walls and further restricted to the following hours: 11:00 AM to 11:00 PM from Monday through Thursday; 11 AM through 12:00 midnight on Friday and Saturday; and 11:00 AM through 10:00 PM on Sunday. Live music must be limited to non-amplified music.*
2. *The special exception is limited to on-premises consumption of alcoholic beverages in a 4690 square-foot area encompassing the indoor areas, both roofed patio/deck areas, and walk-in coolers as shown on the site plan, which is attached to this resolution as Exhibit B and hereby incorporated by reference.*

3. *The special exception is limited to a 4COP license for on-premise consumption of alcoholic beverages. The sale of alcoholic beverages on the subject property must comply with the provisions of LDC Section 34-1264(k) concerning sale of alcoholic beverages in restaurants. The terms and conditions of this approval as set forth in this resolution shall be deemed to equally apply should the applicant cease operation of a 4COP and operate under the terms of an SRX series license as defined by Florida law.*
4. *The hours of operation during which alcoholic beverages may be served on-premises are limited to Monday through Thursday between the hours of 7:00 AM and 12:00 midnight; between 7:00 AM and 1:00 AM on Friday and Saturday; and between 7:00 AM and 10:00 PM on Sunday.*
5. *A full menu of food, encompassing full-course meals, must be available and offered to indoor and outdoor seating during hours of operation for consumption on premises. The sale of alcoholic beverages must be incidental to the sale of food.*
6. *The business must be in full compliance at all times with applicable provisions of state beverage law for the series of beverage license it holds.*
7. *The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles found in LDC Chapter 14, Article II.*
8. *This resolution does not grant consent for an awning or overhang proposed in the site plan to be constructed over the public right-of-way. The Town Council must address this matter separately.*
9. *Condition #9 above does not grant the owner or successor in interest undeniable right to development order approval.*

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding approval of special exceptions, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

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

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

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

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

DULY PASSED AND ADOPTED THIS **17th** day of **SEPTEMBER 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

Parcel lying westerly of SR 865
Blocks 4 & 5, Business Center
Section 24, T. 46 S., R. 23E
Estero Island, Lee County, Florida

EXHIBIT A

A tract or parcel of land lying in Blocks 4 and 5, and portions of a vacated alley lying between Blocks 4 and 5, as shown on the plat of Business Center, Section 24, Township 46 South, Range 23 East, Estero Island and recorded in Plat Book 9 at page 9 of the public records of Lee County, Florida which tract or parcel is described as follows:

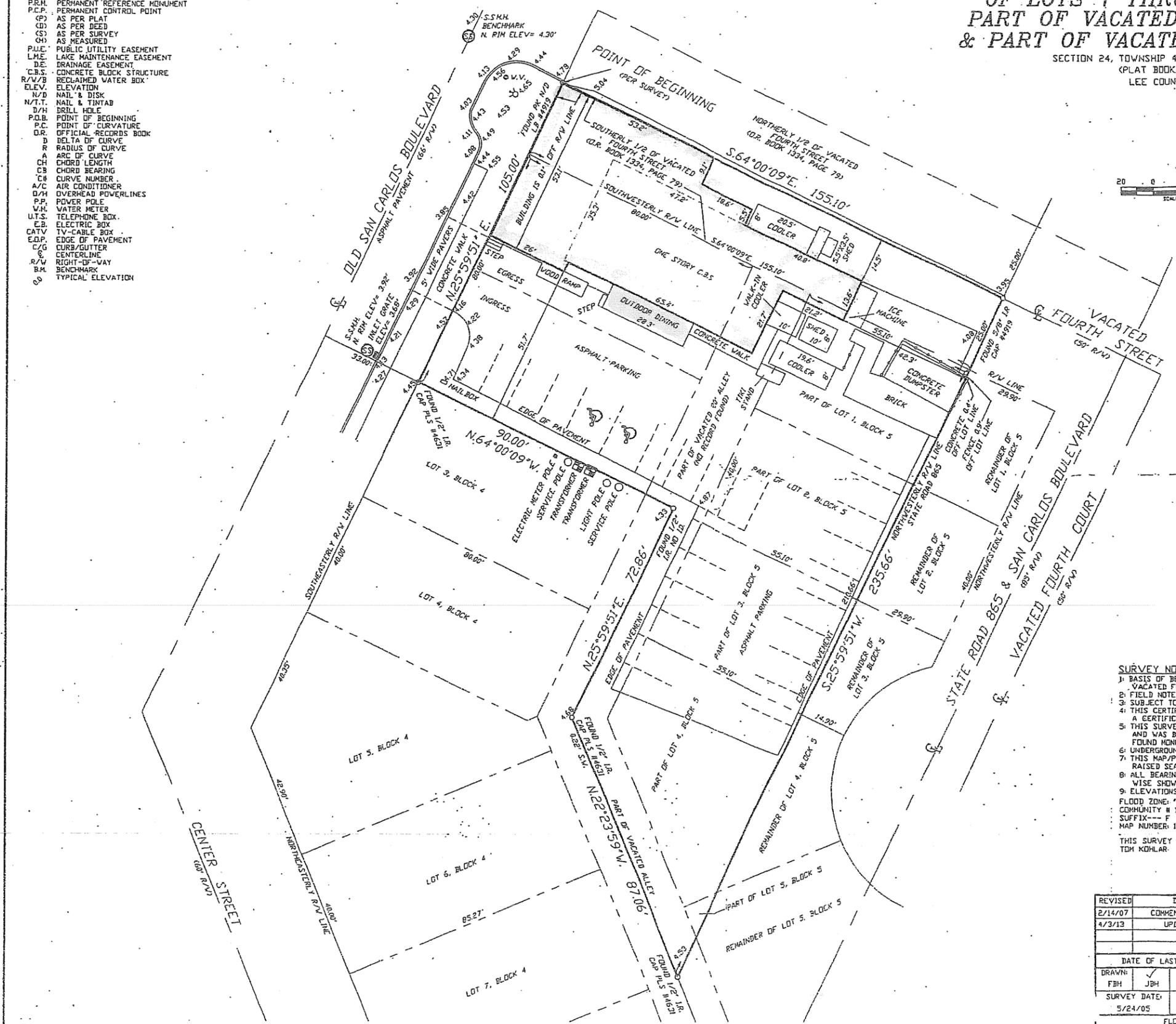
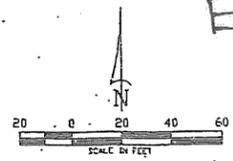
Beginning at the northerlymost corner of Lot 1, Block 4 run S 64 degrees 00'09" E along the southwesterly line of Fourth Street for 155.10 feet to a concrete monument on the northwesterly line of SR 865 (85 feet wide); thence run S 25 degrees 59'51" W along said northwesterly line for 210.66 feet to a concrete monument on the centerline of a vacated alley 20 feet wide; thence run N 22 degrees 23'59" W along said centerline for 87.06 feet to a concrete monument; thence run N 25 degrees 59'51" E along said centerline for 72.86 feet to a concrete monument; thence run N 64 degrees 00'09" W along a southeasterly prolongation of the southwesterly line of Lot 2 of said Block 4 and the southwesterly line of said lot for 90 feet to a concrete monument on the southeasterly line of San Carlos Boulevard (66 feet wide); thence run N 25 degrees 59'51" E along said southeasterly line for 80 feet to the Point of Beginning.

Containing 19,033 square feet more or less.

- LEGEND:**
- SET IRON PIN (CAP #4631)
 - FOUND IRON PIN (C.R.)
 - CONCRETE MONUMENT (C.M.)
 - CONCRETE (CONC.)
 - PERM. PERMANENT REFERENCE MONUMENT
 - P.C.P. PERMANENT CONTRL. POINT
 - (P) AS PER PLAT
 - (D) AS PER DEED
 - (S) AS PER SURVEY
 - (M) AS MEASURED
 - P.U.E. PUBLIC UTILITY EASEMENT
 - L.M.E. LAKE MAINTENANCE EASEMENT
 - D.E. DRAINAGE EASEMENT
 - C.B.S. CONCRETE BLOCK STRUCTURE
 - R/W/B RECLAIMED WATER BOX
 - ELEV. ELEVATION
 - N/D NAIL & DISK
 - N/T/T NAIL & TINTAB
 - D/H DRILL HOLE
 - P.O.B. POINT OF BEGINNING
 - P.C. POINT OF CURVATURE
 - O.R. OFFICIAL RECORDS BOOK
 - D DELTA OF CURVE
 - R RADIUS OF CURVE
 - A ARC OF CURVE
 - CH CHORD LENGTH
 - C.B. CHORD BEARING
 - C# CURVE NUMBER
 - A/C AIR CONDITIONER
 - D/H OVERHEAD POWERLINES
 - P.P. POWER POLE
 - V.M. WATER METER
 - U.T.S. TELEPHONE BOX
 - E.B. ELECTRIC BOX
 - CATV TV-CABLE BOX
 - E.O.P. EDGE OF PAVEMENT
 - C/G CURB/GUTTER
 - & CENTERLINE
 - R/W RIGHT-OF-WAY
 - B.M. BENCHMARK
 - ± TYPICAL ELEVATION

AS-BUILT SURVEY OF
**LOTS 1 & 2, BLOCK 4 & PART
 OF LOTS 1 THRU 5, BLOCK 5 &
 PART OF VACATED FOURTH STREET
 & PART OF VACATED 20 FOOT ALLEY**
 SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
 (PLAT BOOK 9, PAGE 10)
 LEE COUNTY, FLORIDA

EXHIBIT B



- SURVEY NOTES:**
1. BASIS OF BEARINGS SHOWN HEREON TAKEN FROM THE CENTERLINE OF VACATED FOURTH STREET, AS BEING S.64°00'09"E.
 2. FIELD NOTES IN BUSINESS CENTER.
 3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
 4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
 5. THIS SURVEY DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
 6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
 7. THIS MAP/PLAT IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
 8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
 9. ELEVATIONS ARE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (N.G.V.D.). FLOOD ZONE: "AE" ELEVATION: 12.00' & 13.00' N.A.V.D.
 - COMMUNITY # 120573 PANEL # 0554
 - SUFFIX --- F REVISION DATE: 8/28/08
 - MAP NUMBER: 1207100554F
- THIS SURVEY IS CERTIFIED TO:
 TDM KOHLAR.

REVISED	DESCRIPTION	BY
2/14/07	COMMENTS PER COUNTY	FBH
4/3/13	UPDATE SURVEY	FBH
DATE OF LAST FIELD WORK: 4/2/13		
DRAWN: FBH	SCALE: 1"=40'	PROJ. # BC-B-4_5
SURVEY DATE: 5/24/05	FILE NO. 46-23-24	SHT. - 1 OF - 1

PHILIP W. JORGENSEN, INC.
 PROFESSIONAL SURVEYOR AND MAPPER
 #6512 - STATE OF FLORIDA
 HARRIS - JORGENSEN, INC.
 3046 DEL ESPADO BLVD, S. 3A
 CAPE CORAL, FLORIDA 33909
 PHONE: (239) 337-2634
 FAX: (239) 257-5921

FLORIDA CERTIFICATE OF AUTHORIZATION # LB 95511