

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 97- 6

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH,
FLORIDA APPROVING THE REQUEST FOR MODIFICATION OF A
SPECIAL PERMIT FOR CONSUMPTION OF ALCOHOL ON PREMISES.

WHEREAS, Jim Figuerado filed an application for Modification of Condition #1 in Lee County Case 94-12-22-SP-01 to allow a 4-COP SRX beer, wine and liquor license in a 5,200 square foot restaurant; and,

WHEREAS, the subject property is located at 4765 Estero Boulevard, Ft. Myers Beach, and is described more particularly as in Section 28, Township 46 South, Range 24 East, Lee County, Florida; and,

WHEREAS, the applicant has indicated the property's current STRAP number is: 28-46-24-W4-00001.0030; and

WHEREAS, a public hearing was advertised and held on April 18, 1996, before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff, the documents on file with Lee County, and the testimony of all interested persons; and,

WHEREAS, the applicant filed for and received a Florida Statute Section 70.51, Special Master recommendation; and,

WHEREAS, a public hearing was advertised and held on July 15, 1996, before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the Special Master, and the testimony of all interested persons; and,

WHEREAS, the applicant filed an action in the Circuit Court of the Twentieth Judicial Circuit and an order was issued, Copy attached; and,

WHEREAS, a public hearing was advertised and held on February, 27, 1997, before the Fort Myers Beach Town Council who gave full and complete consideration to the Order of the Circuit Court.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested modification as recommended by the Special Master, in compliance with the order of the court.

FINDINGS AND CONCLUSIONS:

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

1. The Circuit Court's order justifies any adverse impact.
2. The property has been designated as a "Water Dependent Overlay Zone" and because the proposed modification constitutes a conversion to non-water-dependent use, requires a public hearing.
3. The proposed modification is an expansion of the restaurant and broadens the products sold from beer and wine to add liquor.
4. Section 34-1264 (2) b. places the burden of proof upon the applicant to demonstrate that approval will not have any adverse affect on surrounding properties.
5. Attachment "A" of the Special Master's Recommendation is made an attachment to this resolution and part thereof.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

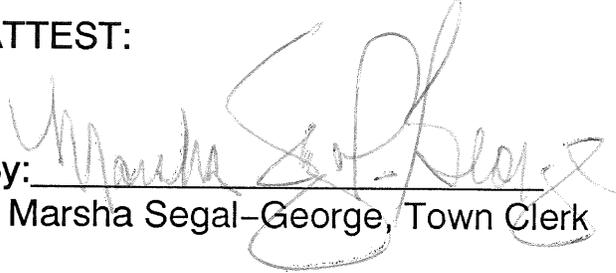
Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>aye</u>
William (Rusty) Isler	<u>no</u>
Garr Reynolds	<u>no</u>
Ray Murphy	<u>aye</u>

APPLICATION APPROVED this 27th day of February, 1997.

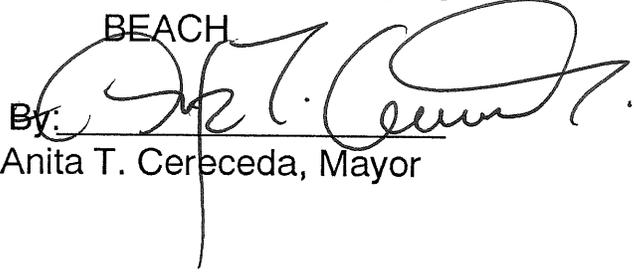
ATTEST:

TOWN OF FORT MYERS
BEACH

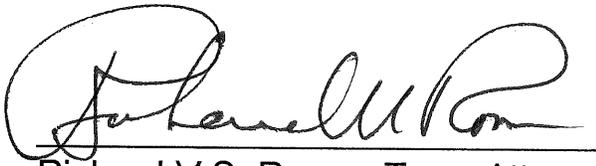
By:


Marsha Segal-George, Town Clerk

By:


Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

JAMES FIGUERADO and
DEBORAH FIGUERADO,
Husband and Wife,

Petitioners,

v.

CASE NO.: 96-6025 CA RWP

TOWN OF FORT MYERS BEACH,

Respondent.

FINAL ORDER GRANTING CERTIORARI

This is a certiorari proceeding initiated by the Petitioners, JAMES FIGUERADO and DEBORAH FIGUERADO, Husband and Wife, to contest an administrative order entered by the Council of the Town of Fort Myers Beach, Lee County, Florida, in an application for a special permit for 4-COP-SRX, Case No. 96-02-186.02S. This Court has jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(c)(3) and 9.100(c)(2), and Sections 34-83 and 84 of the Land Development Code in effect in the Town.

The denial was entered on July 15, 1996 by Resolution 96-20 by a three to two vote. Extensive briefs have been submitted by counsel for Petitioner and Respondent, and the Court heard oral argument on January 6, 1997.

Upon consideration of the briefs, oral argument and review of the record of the proceedings, it is

ORDER and ADJUDGED that certiorari is granted. It is further

ORDERED and ADJUDGED that the Town Council's decision on July 15, 1996 denying the

special permit in Case No. 96-02-186.02S by Resolution No. 96-20 is hereby QUASHED. It is further

ORDERED and ADJUDGED that a quasi-judicial proceeding requires a final decision to be based upon competent, substantial evidence. It is further

ORDERED and ADJUDGED that there was no competent, substantial evidence in the record to support a denial of the special permit. It is further

ORDERED AND ADJUDGED that there was competent, substantial evidence in the record to approve the application for a special permit as consistent with the Comprehensive Plan and in compliance with the Land Development Code. It is further

ORDERED and ADJUDGED that this proceeding is remanded to the Town Council with instructions to approve the special permit based upon the record and consistent with this opinion.

DONE and ORDERED in Chambers at Fort Myers, Lee County, Florida this 24 day of

Jan, 1997.

S/ R. WALLACE PACK

R. Wallace Pack, Circuit Judge

cc: Richard V. Roosa, Esq.
Beverly Grady

Pursuant to Florida Rule of Civil Procedure 1.080, conformed copies of the foregoing Final Order Granting Certiorari have been furnished to the above listed attorneys this 24 day of Jan, 1997.

S/ CAROLE S. BEACH
Judicial Assistant

FLORIDA STATUTES §70.51 SPECIAL MASTER PROCEEDING
TOWN OF FORT MYERS BEACH

IN RE: JIM & DEB FIGUERADO
REQUEST FOR RELIEF FROM
DECISION OF TOWN OF FORT
MYERS BEACH DATED APRIL 18, 1996

SPECIAL PERMIT #96-02-186.025

SPECIAL MASTER'S RECOMMENDATION

A special master proceeding has been conducted pursuant to Section 70.51, F.S. The mediation phase was initiated on June 21, 1996. As part of a compromised offer to settle, the Figuerados presented a revision to the original application. The revision was discussed and the mediation was adjourned to June 27, 1996, whereupon further details were presented and discussed by representatives of both parties. Through the presentation and discussions between the parties it is determined that the restaurant, as proposed in the revised application, is an incidental use which directly supports and is necessary to the success of the marina. The restaurant has been reduced to the minimal size needed to adequately service at least 150 seats with full course meals as necessary to meet the requirements for the 4-COP SRX liquor license, and to further limit the restaurant or deny the application would unreasonably or unfairly burden the use of the owner's property. The application as revised in Attachment A protects the public's interest and the undersigned Special Master hereby recommends to the Town Council of Fort Myers Beach that the application as revised in the following attachment be approved.

Dated this 27th day of June, 1996.



STEVEN C. HARTSELL, Special Master
Pavese, Garner, Haverfield, Dalton, Harrison & Jensen
Post Office Drawer 1507
Fort Myers, Florida 33902-1507
(941) 336-6244

**ATTACHMENT "A" TO
SPECIAL MASTER'S RECOMMENDATION
Special Permit #96-02-186.025**

To alleviate the concerns that were raised by the Town, the owner is amending the application as follows:

1. The Special Permit is limited to a 4-COP SRX liquor license which is restricted to a 3,650 square foot ± restaurant with 40 outdoor seats at the location reflected on the site plan attached as Exhibit A. The restaurant with outdoor seating will be an accessory use to the marina use.
2. Hours of operation for service of alcohol shall be as follows:
 - a. Service to outdoor seating - 11:00 a.m. to 9:00 p.m.
 - b. Restaurant - 11:00 a.m. to midnight, daily.
3. There shall be no live entertainment, juke boxes or television sets in the outdoor seating area; only recorded background music (excluding rap, hard rock and heavy metal music) will be allowed.
4. The ten-foot buffer and fence have been installed along the south property line. Owner shall install an additional twenty-six (26) trees along the south property line (as part of the Development Order issued by Lee County under the authority delegated by the Town of Fort Myers Beach pursuant to Land Development Code Chapter 10.) Owner shall install thirty (30) trees within the ten-foot buffer along the north property line. If the existing fence on the north (Ocean Harbor) property line is removed, owner shall install a fence not less than eight feet in height so that visibility through said structure is not more than 25% when viewed from right angles.
5. Service of food and alcohol from the tiki-hut will be eliminated. The outdoor seating area will be served only from the restaurant interior as part of the operation of a full service restaurant. Restaurant service to outdoor seating will end at 9:00 p.m.
6. The ten (10) slips on the south side of the east pier (directly in front of the restaurant) will be dedicated to restaurant use only.

