

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2007-06

WHEREAS, Applicant Emmanuel Neskes & Stavros Maillakakis ("Applicant") has requested a Special Exception for the Plaka Restaurant to permit a 4-COP-SRX liquor license in conjunction with the subject property which provides outdoor seating and is located within 500 feet of a park and a dwelling; and

WHEREAS, the subject property currently houses Plaka Restaurant, a one-story, 2,384+/- square foot building, including enclosed space and a covered patio, with a seating capacity for 100 patrons; and

WHEREAS, Applicant has indicated the subject property's current STRAP number is 24-46-23-W3-00008.0000; the legal description of the subject property is attached hereto as Exhibit "A" and incorporated herein by reference, and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 10, 2007; and,

WHEREAS, at the hearing, the LPA gave full and complete consideration to the recommendations of staff, related documents, the request of Applicant and the testimony of Applicant, staff, and other interested persons as required by the Town of Fort Myers Beach Land Development Code 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 Applicant, staff, and other interested persons at the hearing, review of the application, and the standards for granting special exceptions, the LPA recommends the following conditions for approval, findings, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** Applicant's request for a special exception to permit a 4-COP-SRX liquor license in conjunction with the subject property which provides outdoor seating and is located within 500 feet of a park and a dwelling, with such approval subject to the following conditions.

RECOMMENDED CONDITIONS OF APPROVAL:

1. The Special Exception is limited to on-premises consumption of alcoholic beverages for a maximum of 256 seats. This includes the proposed 136 indoor seats and the existing, approved 120 outdoor seats. A minimum of 150 seats must be maintained as established in Florida Statute 561.20 (2) (a) 4.
2. Outdoor seating is subject to review and approval of a "Yearly Permit Agreement and Rules for Extension of Food Oriented Operation" by the Town of Fort Myers Beach as required by LDC section 34-678(f). Applicant's current permit is approved for 1,905 square feet with no more than 25 tables and 120 chairs.

3. The Special Exception is limited to a 4-COP-SRX beverage license to be utilized in conjunction with the subject property and the area currently approved as an extension of the premises onto public property. The gross revenue received from the sale of food and non-alcoholic beverages must not fall below 51% of total sales. If sale of alcoholic beverages exceeds 49% of total sales, this approval will become null and void. Books and records may be audited by the Town Manager or designee as provided by LDC section 34-1264 (k).
4. The hours of operation are limited to Monday through Sunday between the hours of 7:00 AM to 12:00 midnight.
5. Outdoor music is prohibited, except for playing pre-recorded music at low volume from 11 AM until 9 PM. Indoor music and/or entertainment is restricted to the hours of 11:00 AM until 11 PM.
6. 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.

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of Sections 34-84 and 34-88 of the LDC 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 **exist** that make the requested approval, as conditioned, appropriate.

The subject property is located within the Pedestrian Commercial future land use category and the Downtown zoning district. The Pedestrian Commercial future land use category provides for commercial activities that contribute to pedestrian-oriented activities such as outdoor seating. The Downtown zoning district permits a variety of uses including residential, lodging, office, retail, civic and limited marine.

The restaurant use of the subject property has been in business since 1980. Times Square is a pedestrian-oriented commercial activity center accommodating tourist activity as well as residential uses. Outdoor seating encourages pedestrian activity; therefore, as conditioned, the request is appropriate.

2. The requested special exception, as conditioned:
 - a) is consistent with the goals, objectives, policies and intent of The Town of Fort Myers Beach Comprehensive Plan:

Approval of the requested Special Exception will continue Applicant's efforts to improve their existing business located in the Pedestrian Commercial future land use category of the Town of Fort Myers Beach Comprehensive Plan and thus shall offer additional services to the public, including residents and tourists. The Pedestrian Commercial future land use category encourages residential uses in upper floors where commercial uses are permitted such as in Times Square, resulting in residential uses in proximity to or within 500 feet of businesses that engage in the sale of alcoholic beverages.

- b) will protect, conserve, or preserve environmentally critical areas and natural resources; and

Applicant will be required to meet all applicable regulations, including but not limited to, zoning, building, and environmental to insure protection and preservation of environmentally critical areas and natural resources.

- c) meets or exceeds all performance and locational standards set forth for the proposed use in Chapter 34 of the LDC:

The subject property, in accordance with the variance approved in Resolution Number 2006-09 and with the recommended, proposed conditions in conjunction with this Special Exception request, meets the performance and locational standards set forth for the proposed use in Chapter 34 of the LDC.

- d) will be compatible with existing or planned uses:

The requested Special Exception, with recommended conditions will be compatible with existing or planned uses in the Downtown zoning district, more specifically Times Square. Times Square, an intense commercial activity center, provides an environment unique to the Town of Fort Myers Beach. It is an area planned as a "park once" district with preference given to pedestrian movement. The location of the outdoor seating is within areas engaged primarily in activities that serve the public. The outdoor seating area for the Plaka Restaurant is located adjacent to pedestrian walkways and other commercial businesses. There are no religious facilities, schools or day care centers located within 500 feet of the subject property.

- e) will not cause damage, hazard, nuisance or other detriment to persons or property:

Applicant currently holds a 2-COP retail beverage license permitting the sale of beer and wine, including inside and outdoor seating. The Special Exception request will permit the sale of beer, wine and liquor in conjunction with a restaurant as well as outdoor seating. The subject property is located within 500 feet of a residential dwelling under separate ownership and a park. The park, which is owned, maintained and operated by Lee County, provides public parking, showers, and restrooms utilized by visitors to the Town and beach. The Downtown zoning district encourages mixed uses of residential and commercial. Therefore, the Special Exception request, with the recommended conditions, will not cause damage, hazard, nuisance, or other detriment to persons or property.

- f) will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use as set forth in the LDC:

The requested Special Exception with recommended conditions will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Town of the LDC.

2. The LPA recommends the Town Council find that Applicant has demonstrated that the requested Special Exception, as conditioned, complies with the standards of the LDC Section 34-88 and with:

- a) The Town of Fort Myers Beach Comprehensive Plan; and
- b) The requirements of the LDC, including but not limited to LDC Section 34-88; and
- c) Any other applicable town ordinances or codes.

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

Tom Babcock aye
Evie Barnes aye
Rochelle Kay aye
Bob Simon nay

Alan Mandel aye
Bob Raymond aye
Dennis Weimer aye

DULY PASSED AND ADOPTED THIS 10th day of April, 2007.

LPA of the Town of Fort Myers Beach

By: Tom Babcock
Tom Babcock, LPA Chair

Approved as to legal sufficiency:

By: Anne Dalton
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: Michelle D. Mayher
Michelle D. Mayher, Town Clerk

COP2005-00189

EXHIBIT A

A parcel of land in Section 24, Township 46 South, Range 23 East, Fort Myers Beach, Lee County, Florida, being more particularly described as follows:

Commence at the southwest corner of Block E, Crescent Park Addition according to the plat thereof recorded in plat book 4, page 46, of the public records of Lee County, Florida, thence N. 70°35'51"W. along the northerly right-of-way line of Estero Boulevard for 744.49 feet to the southwest corner of Lot 4, Block 8, Business Center according to the plat thereof recorded in plat book 9, page 9, of said public records as a point of reference; thence continue N. 70°35'51"W. along said northerly right-of-way line for 40.00 feet to the Point of Beginning of the herein described parcel of land; thence continue N.70°35'51"W. along said northerly right-of-way line for 54.25 feet to an intersection with the easterly right-of-way line of Old San Carlos Boulevard; thence N. 26°01'10"E. along said easterly right-of-way line for 50.02 feet to an intersection with the southerly line of Lot 2 of the aforementioned Block 8; thence S. 70°35'51"E. along said southerly line for 53.49 feet; thence S. 25°08'56"W. for 49.94 feet to the point of beginning.