

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2007-26

WHEREAS, Hans Wilson and Associates, Inc. on behalf of Shamron Beach Condominium Association and at least 75% of the unit owners of the Association (collectively "Applicant") has requested a Special Exception to permit the placement of paver blocks and an eight (8) foot diameter chickee hut in the Environmentally Critical (EC) zoning district.

WHEREAS, the subject property is located at 7650 Estero Boulevard, Ft. Myers Beach, FL, with a STRAP number of 03-47-24-W4-04900.00CE and with a legal description attached as Exhibit "A" and incorporated herein; and

WHEREAS, a public hearing was advertised and held before the Local Planning Agency (LPA) on December 11, 2007, at which time the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, the request of Applicant and the testimony of all interested persons.

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 parties at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings and following conclusions for consideration by the Town Council:

The LPA recommends that the Town Council grant **APPROVAL** of Applicant's request for a special exception to permit the placement of paver blocks and an eight (8) foot diameter chickee hut in the Environmentally Critical (EC) zoning district, subject to the following conditions:

CONDITIONS:

1. The special exception is limited to the placement of minor structures in compliance with all permitting conditions required by the Florida Department of Environmental Protection and all applicable regulations and codes.
2. Approval is limited to the chickee hut and paver block areas as shown on the site plan attached as Exhibit "B" and incorporated herein. No other minor or major structures are approved within the EC zoning district.
3. No artificial lighting is approved for installation in the EC zoning district.
4. If the existing condominium building is removed, destroyed, or replaced for any reason, this approval shall not operate to allow any new or reconstructed major or minor structures, including but not limited to swimming pools, fences, patios, decks, or chickee huts, within the EC zoning district on the subject property. If the condominium building is removed, destroyed, or relocated, the construction

approved herein must be removed or relocated out of the EC zoning district as well.

5. Use of the chickee hut is limited to recreational purposes only. Electrical, plumbing, or other utilities in the chickee hut are prohibited.
6. Approval of this special exception does not authorize placement of any structure within 50 feet of the line of mean high water.
7. Applicant agrees to plant one (1) gallon sea oats, 3 feet on center in an area of the EC district at least the same in area as the chickee hut as approved by a DEP field permit.

RECOMMENDED FINDINGS AND CONCLUSIONS:

The LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. The requested special exception **does comply** with the standards in Land Development Code (LDC) Section 34-88 and:
 - a. The Fort Myers Beach Comprehensive Plan;
 - b. LDC Chapter 34; and
 - c. All other applicable town ordinances and codes.
2. Granting the requested special exception is **not contrary** to the public interest and the health, safety, comfort, convenience, and welfare of the citizens of the Town.
3. The attached conditions **are necessary** for the protection of the health, safety, comfort, convenience, or welfare of the general public and **are reasonably related** to the special exception requested.

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

1. There **EXIST** changed or changing conditions that make approval of this request, with the above conditions, appropriate.

The recommended findings of fact as set forth on pages 4 and 5 of the Town staff report are hereby incorporated by reference.

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

The requested pavers and chickee hut that would be allowed upon approval of the requested special exception would have a limited negative impact on

the beach and dune system in that only the chickee hut would be located further seaward than the already developed area. The chickee hut would be located in approximately the same position as the former chickee hut in an area denuded of vegetation. As conditioned, approval of the request would be consistent with the goals, objectives, policies, and intent of the Comp Plan, especially Goal 5, Objective 5-D and Policy 5-D-1.

- b) **MEETS OR EXCEEDS** all performance and locational standards set forth for the proposed use.

LDC Section 34-638 provides locational regulations for portions of the subject property. As conditioned, approval of the requested special exception will not allow structures to be placed within 50 feet of mean high water of the Gulf of Mexico, in accordance with LDC Section 34-638(d)(3).

- c) **DOES** protect, conserve or preserve environmentally critical areas and natural resources

While the requested use does not overtly protect, conserve, or preserve environmentally critical areas and natural resources, approval of the paver area will not permit new disturbance of environmentally critical areas or natural resources in any previously undeveloped areas. The proposed chickee hut would be located seaward of the paved area in approximately the same location as the former shade structure.

- d) **WILL** be compatible with existing or planned uses and **WILL NOT** cause damage, hazard, nuisance or other detriment to persons or property; and

The recommended findings as set forth on pages 6 and 7 of the Town staff report are incorporated by reference.

- e) **WILL** be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC.

General provisions in LDC Chapter 34 for water-body setbacks require that structures be located a minimum of 50 feet from the Gulf of Mexico in the absence of any other more restrictive requirement, such as the use regulations of the EC zoning district or the Coastal Construction regulations of LDC Chapter 6. Minor structures in the EC zoning district must be expendable under design wind, wave, and storm forces. The recommended conditions will require that the paver area and chickee hut meet these standards.

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

Tom Babcock	<u>AYE</u>	Alan Mandel	<u>AYE</u>	Bob Simon	<u>NAY</u>
Dennis Weimer	<u>AYE</u>	Evie Barnes	<u>AYE</u>		
Bob Raymond	<u>AYE</u>	Rochelle Kay	<u>AYE</u>		

DULY PASSED AND ADOPTED THIS 11th day of December, 2007.

LPA of the Town of Fort Myers Beach

By: Tom Babcock
Tom Babcock, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: Anne Dalton
Anne Dalton, Esquire
LPA Attorney

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