

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2009-29

WHEREAS applicant Atwatter LLC, by and through Walter Simmons, President, has requested a special exception in the DOWNTOWN and EC (Environmentally Critical) zoning districts to allow consumption on premises of beer and wine (2COP) in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, Applicant has indicated its intent to apply for a 2COP State license for the sale of beer and wine for on-premises consumption; and

WHEREAS the subject property is located at 61 Avenue C, Fort Myers Beach, Florida 33931; and

WHEREAS the applicant has indicated that the STRAP number assigned to the subject property by the Lee County Property Appraiser is 19-46-24-W4-0070D-0110 and the legal description of the subject property is LOT 11, BLOCK "D", CRESCENT BEACH SUBDIVISION, as recorded in Plat Book 4, Page 45, Public Records of Lee County, Florida; and

WHEREAS a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on December 15, 2009, as shown by the legal affidavit which is attached hereto as Exhibit "A" and hereby incorporated by reference; 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 to permit consumption on premises of beer and wine (2COP) in the DOWNTOWN and EC (Environmentally Critical) zoning districts, with such approval subject to the following conditions

RECOMMENDED CONDITIONS OF APPROVAL:

1. The licensed area of the subject establishment must be confined entirely to the building areas shown on the floor plan attached hereto and incorporated herein by reference as **Exhibit B**, including the interior of the building, and the two areas of the raised porch labeled "new deck" and "exist. deck." The licensed area, and the area approved for consumption on premises, does not include any area beneath the raised

porch or building, or any portion of the grounds, parking area, or beach and the use of these areas for consumption on premises and food service is prohibited.

2. Music and other audible entertainment must only take place during hours beginning at 10:00 AM and ending at 11:00 PM of each day and must comply at all times with applicable ordinances.

3. Hours of operation for service of alcohol must begin no earlier than 10 am and end no later than 11 pm daily. The hours of service of food and non-alcoholic beverages are not regulated by the Town.

4. The use must comply at all times with the provisions of LDC Section 34-1264(k), as may be amended from time to time, and must at all times be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509, Florida Statutes, and applicable state agency rules.

5. The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles provided in LDC chapter 14, article II.

6. Approval of this special exception does not create a vested right to reconstruct the structure labeled "exist. deck" on **Exhibit B** that is located within the EC (Environmentally Critical) zoning district. The existing structure that is within the EC zoning district is limited by LDC Sections 34-3242 and 34-3245. New construction and/or replacement of existing structures in the EC zoning district must comply with all requirements of the LDC and Comprehensive Plan at the time of permitting.

7. At each egress point from the porch, instructional signs visible to restaurant patrons leaving the licensed area must be placed and maintained containing the legible statement "No Alcoholic Beverages Beyond This Point".

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 **exist** that make the requested approval, as conditioned, appropriate:

Comprehensive Plan (Comp Plan) **Policy 3-D-1** envisions "revitalizing downtown as a lively, inviting, comfortable, and safe public environment." This neighborhood between the Lani Kai resort (1400 Estero Boulevard) and the Estero Island Beach Club condominium (1836 Estero Boulevard) contains a mix of older cottages, mostly used for rentals, and commercial activities such as a retail store with fuel pumps, a seasonal parking lot, a restaurant, a coffee shop, and a few small retail stores. Applicant acquired a development order and building permits to remodel the existing building for reuse as a small restaurant with an outdoor seating area on a raised porch.

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

The subject property is in the Pedestrian Commercial FLUM category, near Estero Boulevard and the Lani Kai resort. Comp Plan **Policy 4-B-6**, regarding the Pedestrian Commercial FLUM, states that commercial activities must contribute to the pedestrian-oriented public realm. The beach areas northward from the Diamondhead and Lani Kai to Lynn Hall Park are heavily traveled by pedestrian beachgoers. The proposed restaurant will be oriented toward this foot traffic while providing a controlled area of alcoholic beverage consumption in conjunction with dining on a raised porch that is sequestered from the beach itself by railings and by its elevation above the adjacent grade. The elevation of the porch, the railings, and the recommended signage should help to remove the use of the restaurant from the activity of the public on the public beach.

3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.

A restaurant is a use permitted by right in the Downtown zoning district. Because dwelling units under separate ownership are located within 500 feet of the subject property, a special exception is necessary in order to allow an outdoor seating area. Performance and locational standards for the restaurant use, site development, and remodeling to the building, have already been addressed through the development order process and the requested use meets the applicable parking requirements under LDC Chapter 34, Article IV, Division 19. Whether or not the use of an existing nonconforming structure in the EC zoning district for on premises consumption is appropriate, is a question best answered on a case-by-case basis by Town Council through the special exception process. Adequate provision has been made for solid waste removal from the site using movable containers.

4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:

The existing structure on the subject property was developed many decades ago. Through the development order and building permit processes existing nonconformities have been removed or mitigated except for the remaining deck that extends into the EC zoning district. Artificial lighting has been required to be brought into compliance with sea turtle protection requirements. Construction of additional structures in environmentally critical areas has not been permitted and appropriate vegetation has been added to the site through the development order process. As conditioned, the existing deck in the EC zoning district cannot be replaced without proper prior approval from the Town Council through the special exception process.

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:

The existing surrounding uses include dwelling units, the Lani Kai resort, a seasonal parking lot, a convenience food and beverage store with fuel pumps, a restaurant, and some small retail stores. Within the Pedestrian Commercial Future Land Use Map category, adjacent dwelling units and vacant lots could

potentially be redeveloped with commercial or mixed use buildings in accord with the regulations of the DOWNTOWN zoning district or through planned development rezoning. The beach adjacent to the subject property supports personal watercraft and parasailing activities licensed under LDC Chapter 27, and is heavily traveled by the public. The recommended conditions clearly restrict the use to the existing deck and prohibit its expansion to the grounds of the site or the adjacent beach.

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 restaurant use complies with parking, lighting, and other similar requirements set forth in LDC Chapter 34. The consumption on premises of alcoholic beverages use, as conditioned, will be required to comply with the applicable standards in LDC Chapter 34, Article IV, Division 5, for consumption on premises in a restaurant regardless of the type or series of state license.

7. The LPA directs that this matter go forward to hearing before Town Council without the necessity of approved LPA minutes.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Ryffel and second by LPA Member Van Duzer, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair aye
Carleton Ryffel, Member aye
Chuck Moorefield, Member aye

Bill Van Duzer, Vice Chair aye
Rochelle Kay, Member aye
Alan Mandel, Member aye

DULY PASSED AND ADOPTED THIS 15TH day of December, 2009

LPA of the Town of Fort Myers Beach

By: Joanne Shamp
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: Anne Dalton
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: Michelle Mayher
Michelle Mayher, Town Clerk

NEWS-PRESS

Published every morning - Daily and Sunday

Fort Myers, Florida

Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared **Kathy Allebach** who on oath says that he/she is the **Legal Assistant** of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a **Notice of Public Hearing** in the matter of **Hearing on December 15, 2009** in the court was published in said newspaper in the issues of **December 3, 2009**

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County; Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Kathy Allebach

Sworn to and subscribed before me this

3rd day of December 2009 by

Kathy Allebach
personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public

Print Name

My commission Expires:

Grady Vandenberg
GRADY B. VANDENBERG
Commission DD 826805
Expires December 13, 2012
Bonded thru Troy Fahn Insurance 800-865-7019

Notice of Public Hearing
Notice is hereby given that the Local Planning Agency of the Town of Fort Myers Beach will hold public hearings at 9:00 AM on December 15, 2009 regarding the cases listed below. These hearings will take place in the council chambers at Fort Myers Beach Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Florida, 33931. You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence to become a participant in the hearings.
At these hearings the Local Planning Agency of Fort Myers Beach will review the cases and make recommendations to the Town Council. If any person should choose to appeal a decision made at these public hearings, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.
Copies of the staff reports are available at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM.
Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Frank Shockey at 239-765-0202.
Case Number: SEZ2009-0001
Case Name: Wicked Wings
Applicant: Waiter Simmons/Atwater, LLC
Request: Special Exception in the DOWNTOWN zoning district to allow consumption on-premises of alcoholic beverages in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership. Applicant indicates the intent to apply for a 2COP State license for the sale of beer and wine for on-premises consumption.
Location: 61 Avenue C, Fort Myers Beach, FL 33931
Staff Report: Inquire at Fort Myers Beach Town Hall, 239-765-0202, 2523 Estero Boulevard, Fort Myers Beach, FL 33931.
Case Number: SEZ2009-0002
Case Name: Taylor Recreation
Applicant: Joseph G. Taylor
Request: Special Exception in the DOWNTOWN zoning district to allow a commercial recreation facility, containing an amusement device (inflatable waterslide), on the subject property.
Location: 1100 and 1130 Estero Boulevard, Fort Myers Beach, FL

ATTACHMENT 3

Exhibit B

