

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 10-01

WICKED WINGS COP

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, at which time 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, and recommended approval of applicant's request, with various recommended conditions of approval, as set forth more fully in LPA Resolution 2009-29; and

WHEREAS, at its meeting of December 15, 2009, the LPA instructed Town staff to bring this application forward to Town Council without the necessity of having approved LPA minutes; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on January 4, 2010, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA resolution 2009-29, the 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 TOWN COUNCIL 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, LPA Resolution 2009-29 and the standards for granting special exceptions, the Town Council makes the following findings of fact and reaches the following conclusions:

The Town Council **APPROVES** 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.

**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 A**, 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. The hours of operation for service of alcohol must not begin earlier than 10:00 AM and must end no later than 11:00 PM daily.

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 A** 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".

**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 Town Council makes the following findings and reaches 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.*

Upon Motion made by Vice Mayor Herb Acken and seconded by Councilmember Raymond, this Resolution was

DULY PASSED AND ADOPTED ON THIS 4<sup>th</sup> DAY OF JANUARY, 2010.

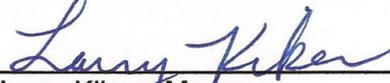
Larry Kiker, Mayor aye  
Tom Babcock, Councilmember aye  
Bob Raymond, Councilmember aye

Herb Acken, Vice Mayor aye  
Jo List, Councilmember aye

ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Michelle Mayher, Town Clerk

By:   
Larry Kiker, Mayor

Approved as to legal form by:

By:   
Anne Dalton, Esquire, Town Attorney



ATTACHMENT 3

