

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 10-12
FMBSEZ 2010-0001 (Fort Myers Beach Hooters Resolution)

WHEREAS applicant Mauhi Enterprises, Inc. and Waterfront Concepts, Inc., by and through Paul Lynch, authorized corporate officer (collectively "applicant") have requested a special exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages, to include beer, wine and liquor, in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership; and

WHEREAS the subject property is located at 1600 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-02300.00CE and the legal description of the subject property is TROPICAL CENTER, a Condominium recorded in Official Record Book 1123, Page 323, Public Records of Lee County, Florida, Lots 2, 3, and 6, Block B, 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 March 23, 2010 and recommended approval of applicant's request, for the reasons set forth more fully in LPA Resolution 2010-0001; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on May 3, 2010, with the Affidavit of Publication for such advertisement attached hereto as Exhibit A and hereby incorporated by reference; and

WHEREAS at the hearing the Town Council gave full and complete consideration to the request of Applicant, the LPA resolution and other LPA materials, 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 and the standards for granting special exceptions, the Town Council makes the following findings of fact, conditions for approval, and conclusions:

The Town Council **APPROVES** the applicant's request for a special exception to permit consumption on premises of beer, wine and liquor in the DOWNTOWN zoning district, with such approval subject to the following conditions.

CONDITIONS OF APPROVAL:

1. The area of the subject establishment used for consumption on premises 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 porch areas.

2. Music and other audible entertainment are prohibited in outdoor seating areas and must comply at all times with applicable ordinances.

3. Sales, service, and consumption of alcoholic beverages must not begin earlier than 11:00 am and must end no later than 12:00 midnight, Monday through Thursday; must not begin earlier than 11:00 am and must end no later than 1:00 am on Friday and Saturday; and must begin no earlier than 12:00 noon and end no later than 10:00 pm on Sunday, in accordance with the applicant's request.

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. The special exception approved by Town Council in Resolution 02-04, and the special permit granted by the Lee County Hearing Examiner in case 94-09-29-SP-04, including any and all specific conditions attached thereto, are hereby declared null and void.

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 make the following findings and reach the following conclusions:

1. The consideration of changed or changing conditions is **not applicable** to this request:

The location of the request was approved in 2002 for consumption of alcoholic beverages on the premises, including the same indoor and outdoor seating areas, in conjunction with a restaurant. The Comprehensive Plan and Land Development Code do not distinguish classes of restaurants that (in addition to non-alcoholic beverages and food) serve beer only, beer and wine only, or beer, wine, and liquor. The applicant's request does not implicate a change in use except insofar as the approved use was limited by special conditions attached to a prior special exception approval.

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 and streets northward from the Diamondhead and Lani Kai to Lynn Hall Park are heavily traveled by pedestrian beachgoers. The existing restaurant is oriented toward this foot traffic, and also has its own parking areas for patrons arriving by automobile. The outdoor seating areas are located on raised porches separated by railings and elevation from the sidewalks and parking areas.

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, were already addressed through the development order process for prior alterations to the building, and the requested use meets the applicable parking requirements under LDC Chapter 34, Article IV, Division 19. There are no specific performance or locational standards in Town regulations for a restaurant with outdoor seating areas that serves beer, wine, and liquor, that differ from the standards that apply to a restaurant with outdoor seating that serves beer and wine only.

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

Construction of additional structures in environmentally critical areas has not been requested or permitted. As conditioned, the use will be required to comply with current sea turtle protection standards.

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, a resort hotel, a large multi-family building, a seasonal parking lot, a convenience food and beverage store with fuel pumps, a shopping center, 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 recommended conditions clearly restrict the use to specific areas of the floor plan and prohibit its expansion to the grounds of the site or the parking areas.

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 existing restaurant use has already been required to comply 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. The appropriate limitations on an outdoor seating area for consumption on premises that is allowed by special exception are for Town Council to determine through the hearing process, during which process they should find that the conditions are reasonably related to the special exception requested.

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The foregoing Resolution was adopted by the Town Council upon a motion by Jo List and seconded by Councilmember Vice Mayor Raymond and upon being put to a vote, the result was as follows:

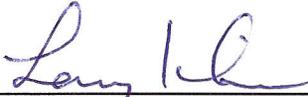
Larry Kiker, Mayor aye
Tom Babcock absent

Jo List aye

Bob Raymond, Vice Mayor aye
Alan Mandel aye

DULY PASSED AND ADOPTED THIS 3RD DAY OF MAY, 2010, BY THE

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Larry Kiker, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire, Town Attorney

EXHIBIT (A)

NEWS-PRESS
Published every morning - Daily and Sunday
Fort Myers, Florida
Affidavit of Publication

APR 27 2010

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 May 3, 2010

In the court was published in said newspaper in the issues of

April 23, 2010

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.

Sworn to and subscribed before me this

23rd day of April 2010 by

Kathy Allebach

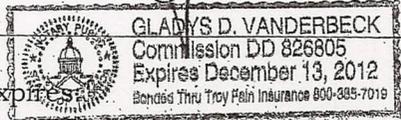
personally known to me or who has produced

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

Notary Public

Print Name

My commission Expires

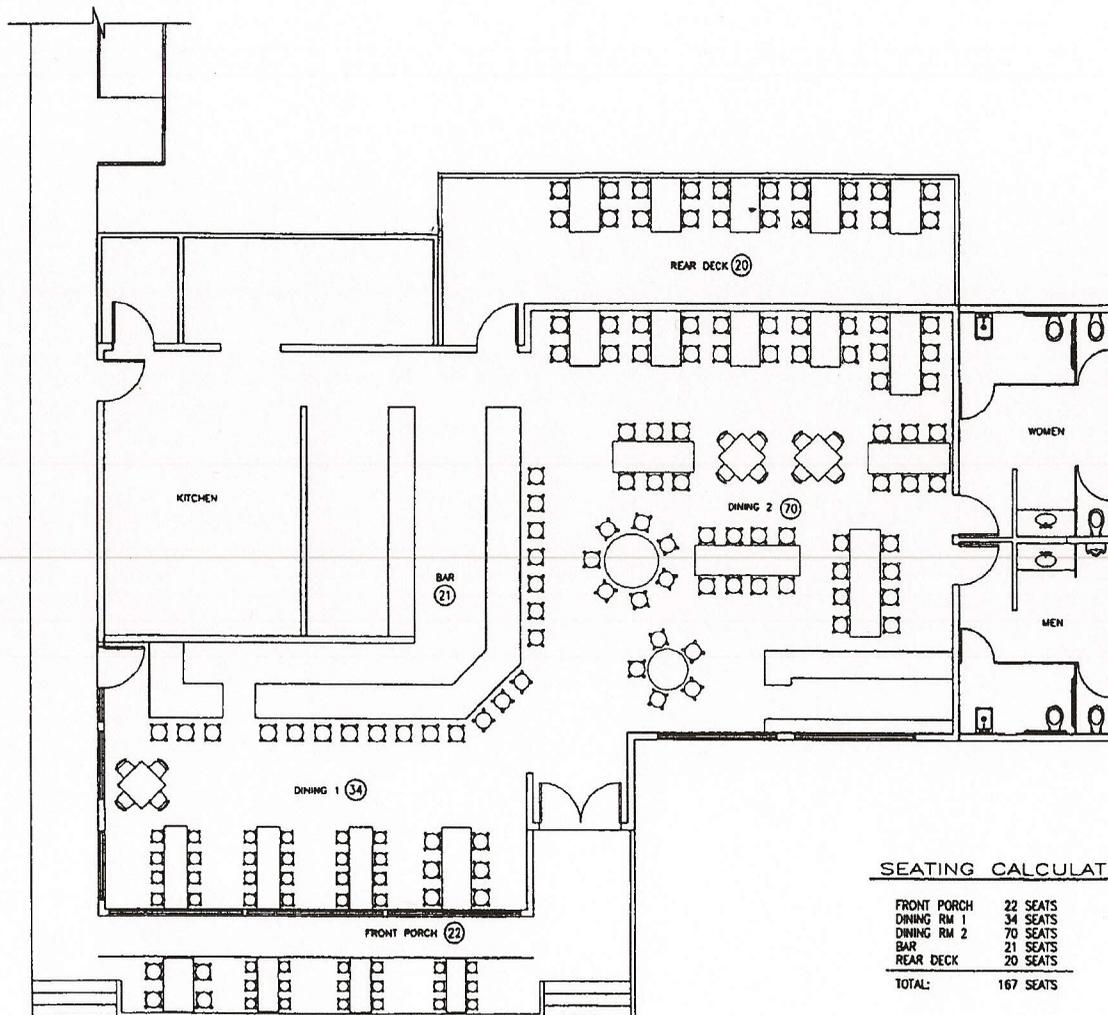


Notice of Public Hearing
Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing at a meeting beginning at 9:00 AM on May 3, 2010 regarding the case listed below. The hearing will take place in the council chambers at Fort Myers Beach Town Hall, 2523 Estero 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 hearing.
At this hearing the Town Council will review the case and grant or deny the request. If any person should choose to appeal a decision made at this public hearing, 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 report 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 Town Hall at 239-765-0202.
Case Number: SEZ2010-0001
Case Name: Hooters COP Special Exception
Applicant: Maui Enterprises, LLC and Waterfront Concepts, Inc.
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; to include beer, wine, and liquor.
Location: The subject property is located at 1600 Estero Boulevard in Fort Myers Beach. Go south on Estero Boulevard from the base of the Sky Bridge, the subject property is on the right (Gulf of Mexico) side of the road.
Staff Report: Inquire at Fort Myers Beach Town Hall, 239-765-0202, 2523 Estero Boulevard, Fort Myers Beach, FL 33931.
Michelle D. Mayher, CMC
Town Clerk
Apr 23 No. 1396660



Town of
Fort Myers Beach

Exhibit B



SEATING CALCULATION

FRONT PORCH	22 SEATS
DINING RM 1	34 SEATS
DINING RM 2	70 SEATS
BAR	21 SEATS
REAR DECK	20 SEATS
TOTAL:	167 SEATS

BUILDING CALCULATION

3,028 SQ. FT.

SEATING PLAN

SCALE: 1/4" = 1'-0"

REVISIONS

MORAND ARCHITECTS, INC.

24551 DETROIT ROAD
WESTLAKE, OHIO 44145

OFFICE: 440-432-3300 FAX: 440-432-3328
E-MAIL: info@morand.com

SEATING PLAN

HOOTERS
1600 ESTERO BLVD.
FT. MYERS, FLORIDA

DATE: 8-23-08

SCALE:

DRAWN: J.P.

JOB NO.:

A.1