

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 10-15

NEMOS ON THE BEACH COP

WHEREAS applicant Estero Beach Holdings, LLC has requested a 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, including an existing patio surfaced with paver blocks located landward of an existing retaining wall but within the EC zoning district, to include beer, wine and liquor; and

WHEREAS the subject property is located at 1154 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS the applicant has indicated that the STRAP for the subject property is 24-46-23-W3-00011.0000 and 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 June 8, 2010; at which time the LPA gave full and complete consideration to the request of the 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 No. 2010-06; and

WHEREAS at its meeting of June 8, 2010, 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 July 12, 2010, at which time the town council gave full and complete consideration to the request of Applicant, LPA resolution 2010-06, 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 2101-06 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, 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 areas shown on the floor plan attached hereto and incorporated herein by reference as **Exhibit B**, including the interior of the first floor of the building, the front porch and the rear patio.*

2. *Music and other audible entertainment are prohibited before 10:00 am and after 10:00 pm each day 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 7:00 AM and must end no later than 2:00 AM during each day.*

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 permit approved by the Lee County Hearing Examiner in case # 95-07-162.02S is 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 makes the following findings and reach the following conclusions:

1. Changed or changing conditions **exist** that make the requested approval, as conditioned, appropriate:

The location of the request was approved in 1995 for consumption of alcoholic beverages on the premises in conjunction with a restaurant, and the allowable seating areas were established through the appeal in 1007. 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 permit, subsequently modified by Town Council determination of an administrative appeal. The modifications to the allowable seating area through the 2007 appeal have made it possible for the establishment to obtain a special restaurant (SRX) series beverage license.

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 on Estero Boulevard and other bars, hotels, restaurants and retail stores. 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 to Lynn Hall Park and southward to the Lani Kai are heavily traveled by pedestrian beachgoers. The existing restaurant is oriented toward this foot traffic, though it has essentially no parking area for patrons arriving by automobile. The outdoor seating areas are located on porches and patios separated by railings and elevation from the sidewalks and the 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 were addressed through permitting for prior remodeling activities and through the 1995 variance as modified by the 2007 administrative appeal. 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. The existing wood retaining wall is not proposed to be replaced or expanded. 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** cause damage, hazard, nuisance or other detriment to persons or property:

The existing surrounding uses include a hotel, a shopping center, bars and restaurants, and a few dwelling units. Within the Pedestrian Commercial Future Land Use Map category, adjacent 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 any further expansion.

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 received a variance related to parking requirements, and was required to comply with lighting and other similar requirements set forth in LDC Chapter 34 at the time of remodeling. 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

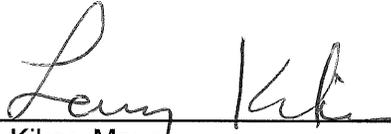
process they should find that the conditions attached are reasonably related to the special exception requested.

Upon Motion made by Vice Mayor Raymond and seconded by Council Member List, this Resolution was

DULY PASSED AND ADOPTED ON THIS 12th DAY OF JULY, 2010.

Larry Kiker, Mayor	aye	Bob Raymond, Vice Mayor	aye
Tom Babcock	absent	Jo List	aye
Alan Mandel	aye		

DULY PASSED AND ADOPTED THIS 12th DAY OF JULY 2010,

By: 
Larry Kiker, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

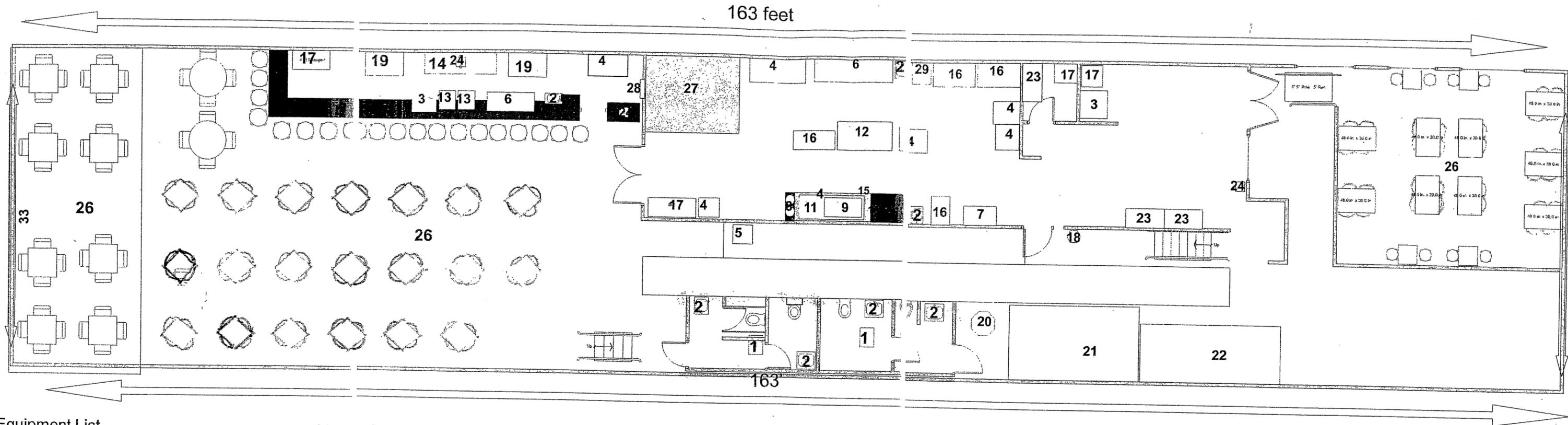
By: 
for James T. Humphrey, Town Attorney

Exhibit "A" Attachment

From the SW corner of Block E, CRESCENT PARK ADDITION, as recorded in Plat Book 4, Page 46 of the Public Records of Lee County, Florida, on the East line of Section 24, Township 46 South, Range 23 East, run along said line for 53.28 feet to the South line of existing county road (Estero Blvd.) right of way 50 feet wide; thence run Northwesterly at an included angle of $69^{\circ} 48' 15''$ with said section line, along the South side of said right-of-way for 122.63 feet to the Point of Beginning of the land hereby conveyed; thence continue along the South line of said right-of-way for a distance of 35 feet; thence run Southwesterly perpendicular to said road a distance of 179 feet, more or less, to the Gulf of Mexico; thence run Southeasterly along said Gulf of Mexico to a point perpendicular to the Point of Beginning of the lands hereby conveyed, being approximately 35 feet, more or less, thence run Northerly and perpendicular with the right-of-way of the existing county road 179 feet, more or less, to the Point of Beginning, being on Estero Island, Lee County, Florida.

Exhibit "B"

Nemo's On The Beach



Equipment List

- | | |
|------------------------------------|-----------------------------|
| 1. Ventilation Fan | 20. Grease Trap |
| 2. Hand Sinks | 21. Propane Tank Area |
| 3. Ice Machine | 22. Dumpster Area |
| 4. Refrierator/Freezer | 23. Dry Storage |
| 5. Mop Sink | 24. POS System |
| 6. 3-Compartment sink w/drainboard | 25. Bar |
| 7. Steam Table | 26. Table & Chairs |
| 8. 2 Burner Stove | 27. Walk In Cooler |
| 9. Flat - Top Griddle | 28. Draft Beer Taps |
| 10. Fryer | 29. Steamer |
| 11. Char Broiler | 30. Portable Fire Extinguis |
| 12. Sandwich Prep Table | |
| 13. Ice Bins | |
| 14. Bottle Beer Refrigerator | |
| 15. Hood with Suppression System | |
| 16. Work Table | |
| 17. Pepsi Bag N Box System | |
| 18. Water Heater | |
| 19. Bottle Chillers | |