

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 07-22

WHEREAS, Three Square Guys, Inc., D/B/A Wahoo Willie's ("Applicant") requested a Special Exception in the Downtown zoning district to allow expansion of the scope of alcoholic beverage service from beer and wine only (2COP) to include intoxicating liquors (4COP-SRX) in conjunction with a restaurant that provides outdoor seating and is located within 500 feet of a park and dwelling units under separate ownership; and

WHEREAS, the subject property is located at 1021 Estero Boulevard, Fort Myers Beach, Florida and currently houses Wahoo Willie's and the Billfish Bar, a restaurant, and a separated unit housing Local Color retail store; and

WHEREAS, Applicant has indicated the property's current STRAP number is 24-46-23-W3-00208.0040 and the legal description thereof 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 April 10, 2007, at which time the LPA recommended approval of Applicant's request with the conditions set forth in LPA Resolution 2007-07; and,

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on June 11, 2007, at which time the Town Council gave full and complete consideration to the recommendations of staff, the record compiled by the LPA, the LPA resolution, related documents, the request of Applicant, and the testimony of Applicant, staff, and other interested persons as required by the Town of Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY 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 finds as follows:

The Town Council **APPROVES** Applicant's request for a special exception to permit a 4-COP-SRX liquor license in conjunction with the subject property which provides outdoor seating and is located within 500 feet of a park and dwelling units under separate ownership. Approval is subject to the following conditions.

**CONDITIONS OF APPROVAL:**

1. The Special Exception is limited to on-premises consumption of alcoholic beverages for a maximum of 232 seats. This includes the 156 indoor seats shown on the floor plan submitted by the applicant and 76 seats in the existing outdoor seating area. A minimum of 150 seats must be maintained as established by Florida Statutes Section 561.20(2)(a)4
2. Outdoor seating is subject to review and approval of a "Yearly Permit Agreement and Rules for Extension of Food Oriented Operation" by the Town as required by

LDC Section 34-678(f). Applicant's current permit is approved for 920 square feet with no more than 19 tables.

3. The Special Exception is limited to a 4-COP-SRX beverage license to be utilized in conjunction with the subject property and the area currently approved as an extension of the premises onto public property. The gross revenue received from the sale of food and non-alcoholic beverages must not fall below 51% of total sales. If sale of alcoholic beverages exceeds 49% of total sales, this approval will become null and void. Books and records may be audited by the Town Manager or designee as provided by LDC Section 34-1264(k).

4. The hours of operation are limited to Monday through Sunday between the hours of 7:00 AM to 12:00 midnight.

5. Outdoor music is prohibited, except for playing pre-recorded music at low volume from 11 AM until 9 PM. Indoor music and/or entertainment is restricted to the hours of 11:00 AM until 11 PM.

6. A full menu of food, encompassing full-course meals, must be available and offered to indoor and outdoor seating during hours of operation for on-premises consumption of alcoholic beverages.

#### **FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of Sections 34-84 and 34-88 of the LDC 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:

The subject property is located within the Pedestrian Commercial future land use map (FLUM) category and the Downtown zoning district. The Pedestrian Commercial FLUM category provides for commercial activities that contribute to pedestrian-oriented activities such as outdoor seating. The Downtown zoning district permits a variety of uses including residential, lodging, office, retail, civic and limited marine.

The restaurant use of the subject property has been in business since 2000. Times Square is a pedestrian-oriented commercial activity center accommodating tourist activity as well as residential uses. Outdoor seating encourages pedestrian activity; therefore, as conditioned, the request is appropriate.

2. The requested special exception request, as conditioned:

a) Is consistent with the goals, objectives, policies and intent of The Town of Fort Myers Beach Comprehensive Plan:

Approval of the requested Special Exception will continue Applicant's efforts to improve its existing business located in the Pedestrian Commercial future land use category of the Town of Fort

Myers Beach Comprehensive Plan and thus shall offer additional services to the public, including residents and tourists. The Pedestrian Commercial future land use category encourages residential uses in upper floors where commercial uses are permitted such as in Times Square, resulting in residential uses in proximity to or within 500 feet of businesses that engage in the sale of alcoholic beverages.

- b) Will protect, conserve, or preserve environmentally critical areas and natural resources:

Applicant will be required to meet all applicable regulations, including but not limited to, zoning, building and environmental to insure protection and preservation of environmentally critical areas and natural resources.

- c) Does meet or exceed all performance and locational standards set forth for the proposed use in Chapter 34 of the LDC:

The subject property with the recommended conditions in conjunction with the Special Exception request, meets the performance and locational standards set forth for the proposed use in Chapter 34 of the LDC.

- d) Will be compatible with existing or planned uses:

The Special Exception request, with recommended, proposed conditions will be compatible with existing or planned uses in the Downtown zoning district, more specifically Times Square. Times Square, an intense commercial activity center, provides an environment unique to the Town of Fort Myers Beach. It is an area planned as a "park once" district with preference given to pedestrian movement. The location of the outdoor seating is within areas primarily engaged in activities that serve the public. The outdoor seating area for the Wahoo Willie's Restaurant is located adjacent to pedestrian walkways and commercial businesses. There are no religious facilities, schools or day care centers located within 500 feet of the subject property.

- e) Will not cause damage, hazard, nuisance or other detriment to persons or property:

The applicant currently holds a 2-COP retail beverage license permitting the sale of beer and wine for on-premises consumption of alcoholic beverages, including indoor and outdoor seating. The Special Exception request will permit the sale of beer, wine, and liquor in conjunction with a restaurant as well as outdoor seating. The subject property is located within 500 feet of a residential dwelling under separate ownership and a park. The park, which is owned, maintained, and operated by Lee County, provides public parking, showers and restrooms utilized by visitors to the Town and beach. The Downtown zoning district encourages mixed uses of

residential and commercial. Therefore, the Special Exception request, with the recommended, proposed conditions will not cause damage, hazard, nuisance or other detriment to persons or property.

- f) Will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use as set forth in the LDC:

The Special Exception request, with recommended conditions will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Town of Fort Myers Beach Land Development Code (LDC).

- 2. The Town Council finds that Applicant has demonstrated that the requested Special Exception, as conditioned, complies with the standards of the LDC Section 34.88 and with:

- a) The Town of Fort Myers Beach Comprehensive Plan; and
- b) The requirements of the LDC, including but not limited to LDC Section 34-88; and
- c) Any other applicable Town ordinances or codes.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Meador and seconded by Councilmember Acken, and upon being put to a vote, the result was as follows:

Herb Acken	<u>aye</u>	Charles Meador, Jr.	<u>aye</u>
Dennis Boback	<u>nay</u>	William Shenko, Jr.	<u>nay</u>
Larry Kiker	<u>aye</u>		

DULY PASSED AND ADOPTED THIS 11<sup>th</sup> day of June, 2007.

Town Council of the Town of Fort Myers Beach

By: *Dennis C. Boback*  
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

ATTEST:

By: *Anne Dalton*  
Anne Dalton, Esquire  
Town Attorney

By: *Michelle D. Mayher*  
Michelle D. Mayher, Town Clerk

**FMBSEZ2006-00002**

**EXHIBIT A**

**All of lots 4 and 5, Block 8, BUSINESS CENTER, according to the map or plat on file and recorded in Plat Book 9, Pages 9 and 10, public records of Lee County, Florida. LESS AND EXCEPT THE FOLLOWING: Beginning at the Southwest corner of said Lot 4, Block 8, BUSINESS CENTER, thence Northerly along the Westerly line of said Lot 4 for 61.58 feet to the Northwest corner of said Lot 4; thence Easterly along the North line of said Lot 4 for 7.0 feet; thence Southerly parallel to the West line of said Lot 4 for 13.0 feet; thence Westerly parallel to the North line of said Lot 4 for 5.0 feet; thence Southerly parallel to the West line of Lot 4 for 48.58 feet to the South line of said Lot 4; thence Westerly along the South line of said Lot 4 for 2.0 feet to the point of beginning.**