

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH
RESOLUTION NO. 16-01
SEZ2015-0002 – Nervous Nellies COP Amendment**

WHEREAS, Robert Fowler, Sr., Applicant and authorized agent for Barrier Islands Management, LLC, the owner of Nervous Nellies Restaurant, filed an application to amend Condition 3 of Resolutions 02-40 and 03-36 to allow live amplified music; and

WHEREAS, Applicant has indicated the STRAP number for the subject property is 24-46-23-W3-00004.000 and legally described as indicated on attached Exhibit A; and

WHEREAS, the subject property is physically located at 1131 First Street, Fort Myers Beach, Florida, and within the Downtown zoning district; and

WHEREAS, a duly advertised public hearing was held before the Local Planning Agency (LPA) on December 8, 2015; and

WHEREAS, the LPA recommended approval subject to certain conditions after full and complete consideration to the Applicant's request, recommendations of Town staff, documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-88; and

WHEREAS, on January 4, 2016, the Town Council held a duly advertised public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by LDC s. 34-84; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve the request.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fort Myers Beach, Florida, as follows:

1. **Determination.**

Based upon the recommendations, testimony, and evidence presented by Town staff, LPA, and interested parties, the Town Council finds the Applicant's request, SEZ2015-0002, to amend Condition of Resolutions 02-40 and 03-36, is hereby APPROVED subject to the findings and conditions set forth below.

2. **Conditions.**

- a. Approval of this special exception does not exempt the subject property from any provision of the LDC. The conditions contained in Resolution Number 03-36 remain in effect, except as modified herein.

- b. The location of "Amplified Music" on the outdoor deck is limited to the locations depicted on attached Exhibit B. All outdoor entertainment, including, but not limited to, vocals, musical instruments, and other equipment generating sound, must comply with the Town's Noise Control ordinance and must have its sound regulated and emitted through a fixed internal speaker system managed and controlled by the property owner. All speakers must be oriented towards the water (away from adjacent residential property owners).
- c. Condition 3 of Resolutions 02-40 and 03-36 is amended to read:
Outdoor music or entertainment is limited to 11PM.

3. Findings and Conclusions of Law.

- a. The above recitals are true and correct and incorporated herein as though fully set forth below.
- b. The LPA found the request consistent with the Town of Fort Myers Beach comprehensive plan as conditioned in this Resolution.
- c. The request meets all performance and locational standards set forth for the proposed use.
- d. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- e. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property. Further, adjacent property owners testified they do not object to approval of the request subject to the conditions set forth herein.
- f. The requested use will be in compliance with the Town Land Development Code and complies with other applicable Town codes and ordinances.

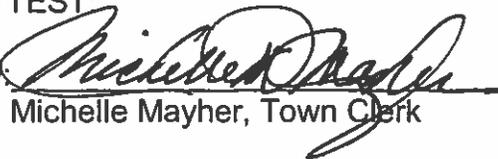
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THE FOREGOING RESOLUTION was adopted by the Town Council upon a motion by Council Member Andre, seconded by Council Member Mandel and upon being put to a vote the results was as follows:

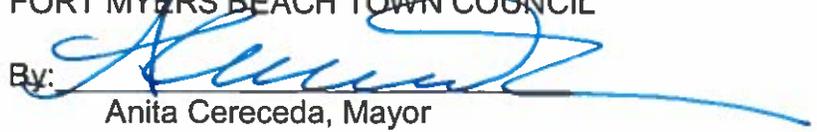
Anita Cereceda, Mayor	Aye	Dan Andre, Vice Mayor	Aye
Rexann Hosafros	Aye	Alan Mandel	Aye
Summer Stockton	Nay		

DULY PASSED AND ADOPTED this 4th day of January, 2016.

ATTEST:

By: 
Michelle Mayher, Town Clerk

FORT MYERS BEACH TOWN COUNCIL

By: 
Anita Cereceda, Mayor

Approved as to legal sufficiency


Town Attorney

Exhibits:

- A: Legal Description (as attached to Resolution 03-26)
- B: Site Plan (as included in request with handwritten notes)

EXHIBIT "A"

DESCRIPTION:

AS SHOWN IN OFFICIAL RECORDS BOOK 1834 AT PAGE 1851;) (O.R. BOOK 2585, PAGE 800)

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 48 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS FURTHER DESCRIBED AS FOLLOWS:

STARTING AT THE SOUTHWEST CORNER OF LOT 28, BLOCK "E" OF CRESCENT PARK ADDITION, ACCORDING TO THE MAP OR PLAN THEREOF AS RECORDED IN PLAT BOOK 4 AT PAGE 48 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 28, SAID LINE ALSO BEING THE EASTERLY LINE OF SAID SECTION 24 A DISTANCE OF 21.95 FEET; THENCE NORTHWESTERLY AT AN ANGLE OF 83°17'00" NORTH TO NORTHWEST A DISTANCE OF 89.47 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE ALONG THE SAID LINE NORTHWESTERLY A DISTANCE OF 135.02 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 865 (SAN CARLOS BOULEVARD AS IT RUNS SOUTHWESTERLY FROM THE OLD MATANZAS PASS SWING BRIDGE); THENCE NORTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE PARALLEL WITH AND 33 FEET FROM THE CENTERLINE OF SAID ROAD A DISTANCE OF 89.5 FEET TO THE WATERS OF MATANZAS PASS AND A POINT ON THE LINE OF A SEAWALL; THENCE SOUTHEASTERLY ALONG SAID WATERS AND ALONG THE LINE OF SAID SEAWALL A DISTANCE OF 120 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF NEW STATE ROAD 865; THENCE SOUTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 105 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SAID PARCEL BEING THAT PORTION OF THE PROPERTY CONVEYED TO EDWARD J. SKORUPSKI BY BEACH MARINA, INC., BY DEED DATED THE 12TH DAY OF JANUARY, 1978, THAT IS WEST OF THE RIGHT-OF-WAY LINE OF THE NEW STATE ROAD 865.

Applicant's Legal Checked

by Amey 010CT03

SEZ 2003-00023

Town of Fort Myers Beach
OCT 19 2015
Received Community Devel

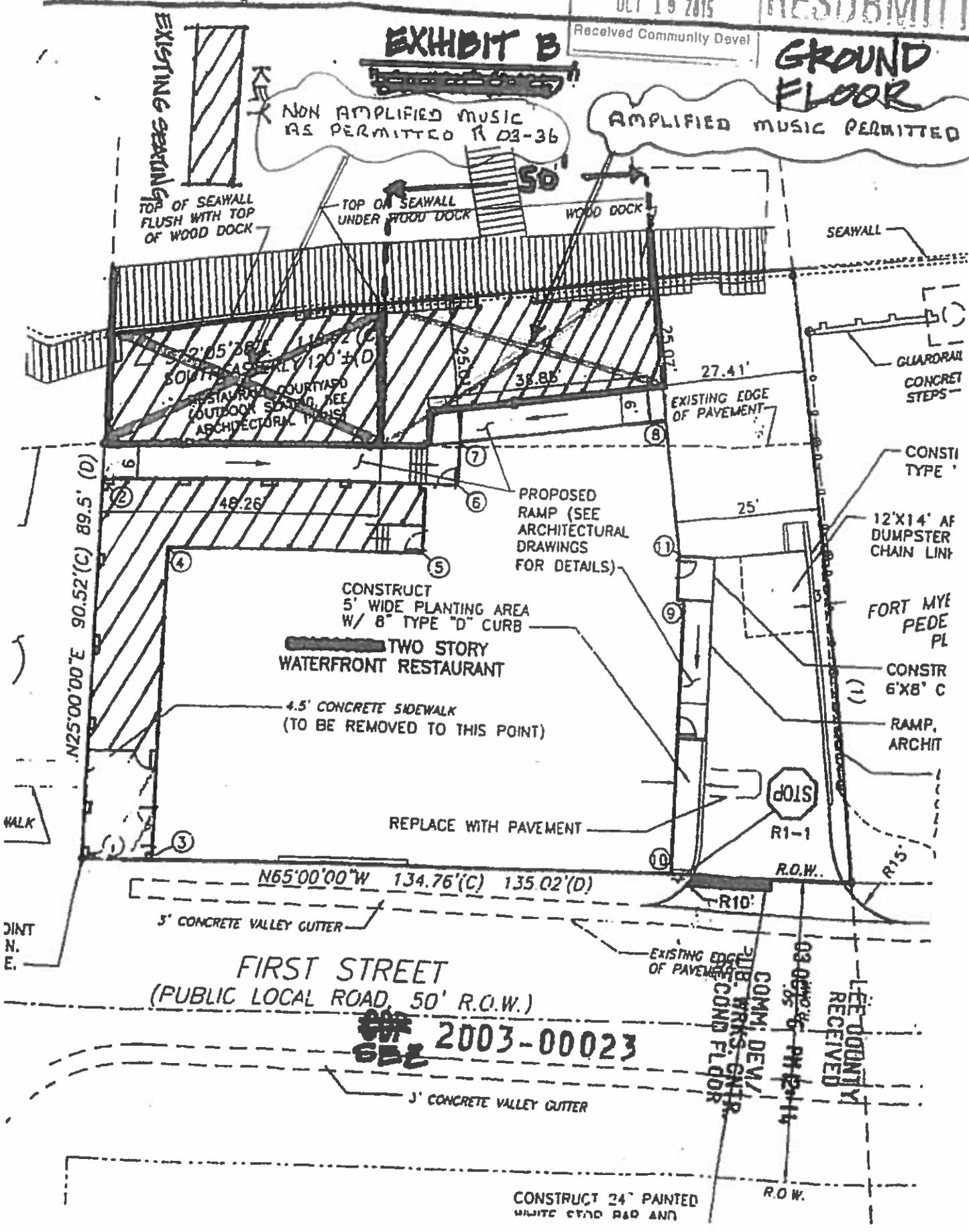
RESUBMITTAL

EXHIBIT B

GROUND FLOOR

NON AMPLIFIED MUSIC AS PERMITTED R 03-36

AMPLIFIED MUSIC PERMITTED



2003-00023

CONSTRUCT 24" PAINTED WHITE STRIP R&D AND

R.O.W.