

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 16-08**

**SEZ 2015-0005 Outdoor Seating Expansion, Outdoor Entertainment
and Consumption on Premises for Yucatan Beach Stand Bar & Grill**

WHEREAS, Joe Mcharris, authorized agent for Stingrays Raw Bar Inc., applicant and owner of the subject property, has requested approval of a Special Exception in the DOWNTOWN zoning district to expand the area where outdoor consumption on premises is permitted to include 1,500± square feet of new outdoor seating area at the side of the existing building, and a change to Condition 1 of Resolution 13-22 approving SEZ2013-0002 to allow music or similar entertainment on the premises, consisting of 1 to 2 person bands, limited to the hours of 11AM to 11PM; and

WHEREAS, Applicant has indicated the STRAP number for the subject property is 24-46-23-W3-0204.0010 and the legal description of the subject property is as indicated on attached Exhibit A; and

WHEREAS, the subject property is physically located 250 Old San Carlos Boulevard, 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 February 11, 2016; and

WHEREAS, the LPA recommended denial 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. 34-121; and

WHEREAS, on February 16, 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 APPROVES the applicant's request for a Special Exception (SEZ2015-0005) in the DOWNTOWN zoning

district to expand the area where outdoor consumption on premises is permitted to include 1,500± square feet of new outdoor seating area at the side of the existing building as described in attached Exhibit B, and to permit music or similar entertainment, consisting of 1 to 2 person bands, limited to the hours of 11:00 AM to 9:00 PM, subject to the conditions set forth in this Resolution.

2. Conditions.

- a. Music and similar entertainment is limited to 1-2 person bands, restricted to the following hours: 11:00 AM to 9:00 PM, and musicians are required to use the Yucatan sound system controlled by management.
- b. The special exception is limited to on-premises consumption of alcoholic beverages in a 6,190 square-foot area encompassing the areas previously approved through Resolution 07-09 and Resolution 13-22, and the new outdoor seating as shown on the site plan attached as Exhibit B.
- c. The special exception is limited to a 4COP license for on-premise consumption of alcoholic beverages. The sale of alcoholic beverages on the subject property must comply with the provisions of LDC Section 34-1264(k) concerning sale of alcoholic beverages in restaurants. The terms and conditions set forth in this resolution will apply to any alcohol license obtained by the applicant for this location, including but not limited to a 4COP and an SRX series license as defined by Florida law.
- d. The hours of operation during which alcoholic beverages may be served on-premises are limited to Monday through Thursday between the hours of 11:00 AM and 12:00 midnight; between 11:00 AM and 1:00 AM on Friday and Saturday; and between 11:00 AM and 10:00 PM on Sunday.
- e. A full menu of food, encompassing full-course meals, must be available and offered to indoor and outdoor seating during hours of operation for consumption on premises. The sale of alcoholic beverages must be incidental to the sale of food.
- f. Gross revenues from sale of food and non-alcoholic beverages must not fall below 51% of total sales over any 12-month period, or over the period during which the business has been in operation if the business has not been in operation for 12 months or more. If sale of alcoholic beverages exceeds 49% of total sales, this approval will become null and void. The Town Manager may require an independent audit of the records of the business to verify compliance. If the Town requires this audit, it will be conducted by an auditor selected by the Town and the costs will be the sole responsibility of the applicant.

- g. The business must be in full compliance at all times with applicable provisions of state beverage law for the series of beverage license it holds.
- h. The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles found in LDC Chapter 14, Article II.
- i. This resolution does not grant consent for the awning or overhang proposed on the attached site plan to be constructed over the public right-of-way. The Town Council must address this matter separately.
- j. Condition i. above does not grant the owner or successor in interest undeniable right to development order approval.

3. **Findings and Conclusions of Law.**

In accordance with LDC s. 34-88, the Town Council finds as follows:

- a. There are changed or changing conditions that make approval of the rezoning request appropriate.
- b. The requested special exception, as conditioned, is consistent with the goals, objective, policies and intent of the Fort Myers Beach Comprehensive Plan.
- c. The requested special exception, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use.
- d. The requested special exception, as conditioned, will not have negative effects on environmentally critical areas and natural resources.
- e. 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.
- f. The requested special exception, as conditioned, will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

THE FOREGOING RESOLUTION was adopted by the Town Council upon a motion by Council Member Hosafros, seconded by Council Member Andre 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	aye		

DULY PASSED AND ADOPTED this 16th day of February, 2016.

ATTEST:

FORT MYERS BEACH TOWN COUNCIL

By: 
Michelle Mayher, Town Clerk

By: 
Anita Cereceda, Mayor

Approved as to legal sufficiency


Town Attorney

Exhibits

- A: Legal Description (attachment A to staff report)
- B: Site Plan (attachment B to staff report)

Town of Fort Myers Beach
NOV 13 2007
Received Community Devel
5-1

EXHIBIT "A"

Town of Fort Myers Beach

F M-B SEZ 2907 0 0 0 0 1

DESCRIPTION: (Per Harris - Jorgensen, Inc.)

A tract or parcel of land lying in Blocks 4 and 5, and portions of a vacated alley lying between Blocks 4 and 5, and a portion of the South Half of vacated Fourth Street, all as shown on the Plat of Business Center, Section 24, Township 46 South, Range 23 East, Estero Island and recorded in Plat Book 9 at Page 9 of the Public Records of Lee County, Florida which tract or parcel is described as follows:

Beginning at the intersection of the centerline of the aforesaid Fourth Street and the Southeasterly right-of-way line of San Carlos Boulevard (66 feet wide); thence run S.64°00'09"E. along the centerline of said Fourth Street for 155.10 feet to a point of the Northwesterly line of SR 865 (85 feet wide); thence run S.25°59'51"W. along said Northwesterly line for 235.66 feet to a point on the centerline of a vacated alley 20 feet wide; thence run N.22°23'59"W. along said centerline for 87.06 feet; thence run N.25°59'51"E. along said centerline for 72.86 feet; thence run N.64°00'09"W. along a Southeasterly prolongation of the Southwesterly line of Lot 2 of said Block 4 and the Southwesterly line of said Lot 2 for 90 feet to the Southeasterly right-of-way line of said San Carlos Boulevard; thence run N.25°59'51"E. along said Southeasterly right-of-way line for 105 feet to the point of beginning. Containing 22,910 square feet, more or less.

Bearings hereinabove mentioned are derived from the Florida Department of Transportation right-of-way maps for SR 865.



John B. Harris
P.S.M. #4631
January 5, 2007

EXHIBIT
7-2
Leg. Rec.

Exhibit B

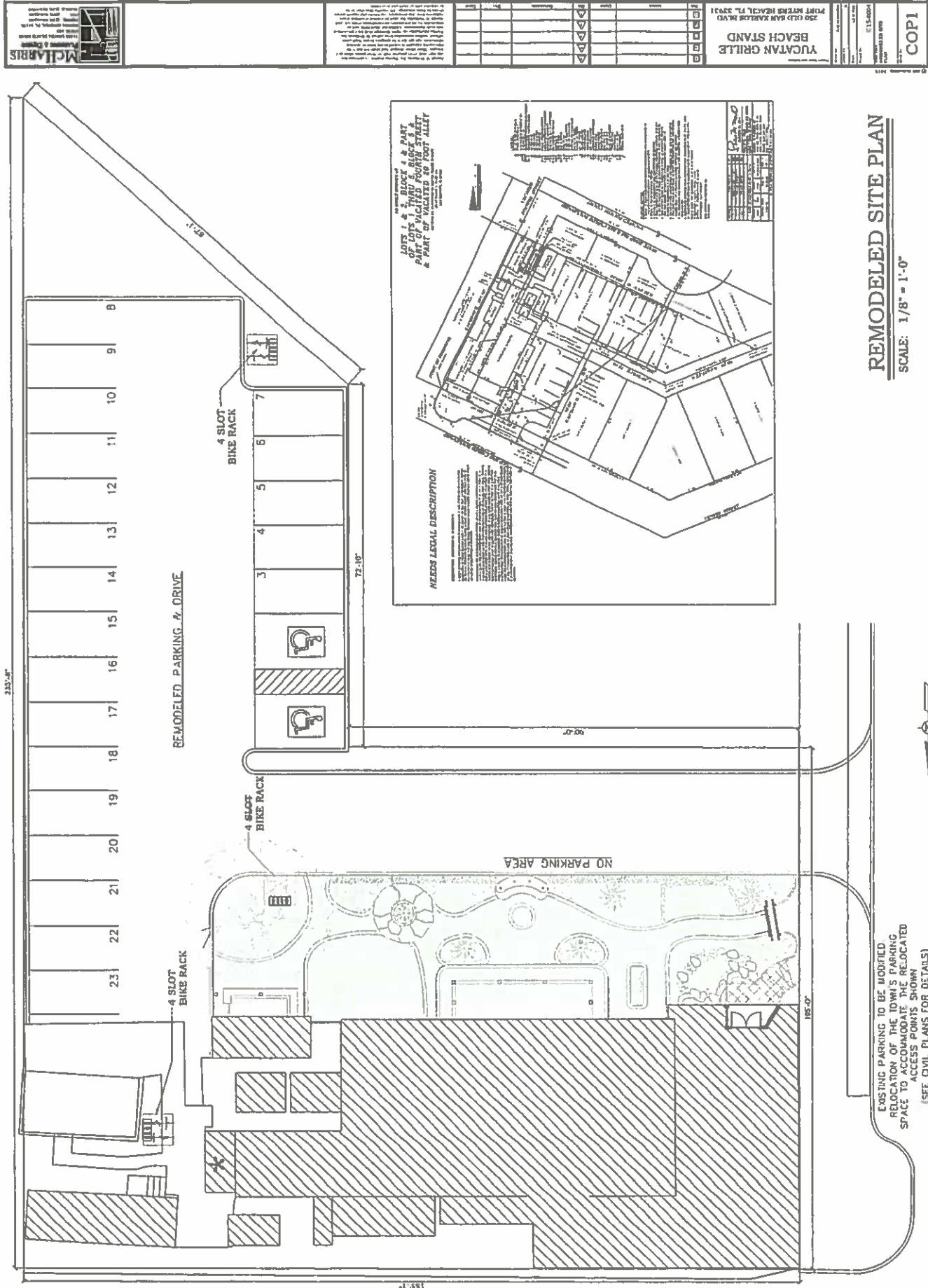
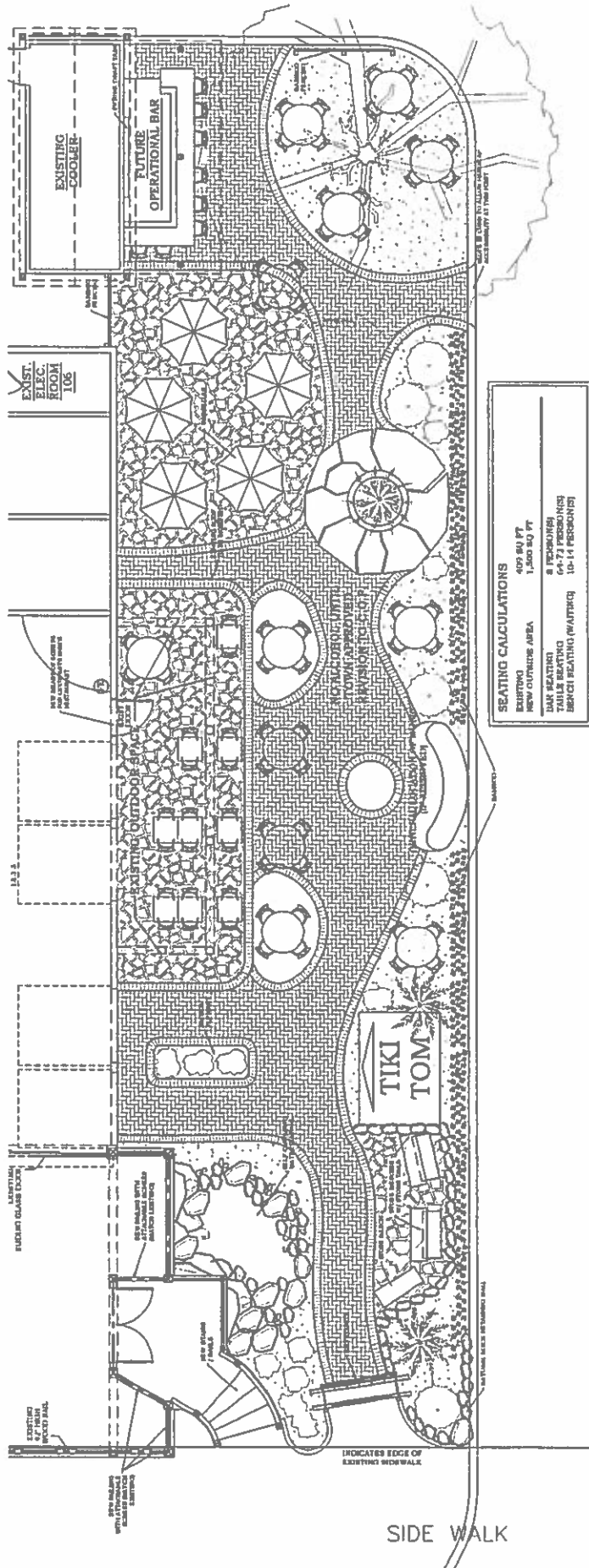


Exhibit B



SEATING CALCULATIONS	
EXISTING	409 SQ FT
NEW OUTDOOR AREA	1,500 SQ FT
TOTAL SEATING	8 PERSONS
TABLE SEATING	64.73 PERSONS
BENCH SEATING (WATERBURY)	10-14 PERSONS

OUTDOOR SEATING PLAN

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

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PROJECT: BEACH GRILLE
LOCATION: 230 OLD SAN CARLOS BLVD
PORT MYERS BEACH, FL 33953

NO.	DATE	DESCRIPTION	BY	CHKD.