



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES
Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Tuesday, February 9, 2016**

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Chair Zuba. Members present: Bruce Butcher, Al Durrett, Suzanne Katt, Joanne Shamp, James Steele and Hank Zuba.

Excused: Jane Plummer

Town Attorney: Dawn Lehnert

Staff: Matt Noble and Megan Will.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. December 8, 2015

Page 4 - Junkanoo was zoned CB, not CV.

MOTION: Ms. Shamp moved to approve the minutes as amended, second by Mr. Steele.

VOTE: Motion approved; 6-0 with Ms. Plummer excused.

B. January 12, 2016

MOTION: Mr. Steele moved to approve the minutes, second by Chair Zuba.

VOTE: Motion approved; 6-0 with Ms. Plummer excused.

V. SEZ2015-0005

A special exception to expand the outdoor consumption on premises (4COP) approval to include an additional 1,500 square feet of outdoor seating area.

Chair Zuba requested ex parte communication for all special exception requests. Ms. ^{Katt}Pratt - site visit; Mr. Steele - site visit; Ms. Shamp - site visit; Chair Zuba - site visit; Mr. Durrett - site visit and Mr. Butcher - site visit.

Town Attorney Lehnert swore in those providing testimony.

Ms. Will reviewed the history of the site.

Joseph McHarris stated the request was a natural progression from the current business and the LDO was to change the location of the driveway and to provide an outdoor area against the building.

Mr. Steele clarified that the request was for a restaurant with a bar. He questioned the dimensions of the area at 1,500 square feet. Ms. Will distributed a revised site plan. Mr. Steele questioned the area of green space on the map. Mr. McHarris replied that the space was non-accessible to people.

Chair Zuba questioned the original approval for the square footage and the additional square footage added to the request. Ms. Will verified that the applicant currently had 4,500 square feet of COP, bringing the total to 4,690. Mr. Butcher noted there were errors in the application and the total square footage was 6,000 (4,500 + 1,500 additional space). Tommy Kolar indicated that the outside area was 1,500 square feet and the existing area under the roof was 409 square feet. Ms. Will explained that the first COP was for 4,500 square feet, the second COP raised it to 4,690 square feet and the current request of 1,500 equaled 6,190 total square feet.

Mr. Steele questioned the number of parking spaces. Discussion ensued regarding the bar area. Town Attorney Lehnert explained that the entire 6,190 square feet was not defined as a bar and cocktail lounge; the bar was a subset of the total square footage. Ms. Will clarified that the additional space required five parking spaces.

Ms. Shamp felt that outdoor music should be prohibited. Ms. Will replied that prohibiting music in the area was not necessary due to the noise ordinance. Ms. Katt agreed with Ms. Shamp.

Mr. Kolar agreed with the new noise ordinance and they did not want to encroach on the neighbors but they wanted to provide background music. Mr. McHarris noted that they had a buffer on the north side. Mr. Kolar indicated that residential neighbors had not voiced any concern and were supportive of their growth. Ms. Will noted that she had not received complaints.

Mr. Steele questioned whether the segway business in the parking lot required parking spaces. Mr. Kolar explained that the business used four to eight square feet. Ms. Will confirmed that there were enough spaces to accommodate the segway business.

Doris Grant, resident, was not in favor of outdoor music especially until 11:00 p.m. She requested that all outdoor music on the beach cease by 9:00 p.m. She stated that Mr. Kolar did not talk to the neighbors.

Mr. Kolar stated that he was more than willing to work with the neighbors and he apologized to Ms. Grant for not talking to her. Ms. Shamp questioned having music outside since they already had music inside. Mr. Kolar replied that another location provided flexibility in bad weather.

Ms. Katt noted that she may vote for the request if the music stopped at 9:00 p.m.

Mr. Durrett was not in favor of changing the hours.

Town Attorney Lehnert questioned whether they intended to have amplified music outdoors. Mr. Kolar replied that they might and they would follow the noise ordinance.

Mr. Steele commented that he could not support the request due to the Town's interpretation of parking. Discussion was held regarding parking and noise.

MOTION: Mr. Durrett moved to approve SEZ2015-0005 with the following conditions outlined by staff: 1. to allow music or similar entertainment consisting of one to two person bands limited to the

hours of 11:00 a.m. to 11:00 p.m.; 2. The special exception is limited to on-premises consumption of alcoholic beverages in a 6,190 square-foot area encompassing the indoor areas, both roofed patio/deck areas, walk-in coolers, and outdoor seating as shown on the site plan, which is attached as *Exhibit B* and hereby incorporated by reference; 3. 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 of this approval as set forth in this resolution shall be deemed to equally apply should the applicant cease operation of a 4COP and operate under the terms of an SRX series license as defined by Florida law; 4. 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; 5. 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; 6. 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 audit of the records of the business to verify compliance at applicant's sole cost and to be conducted by an independent auditor of the Town's selection in the Town's sole judgment; 7. 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; 8. 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.; 9. This resolution does not grant consent for an awning or overhang proposed in the site plan to be constructed over the public right-of-way. The Town Council must address this matter separately and 10. Condition #9 above does not grant the owner or successor in interest undeniable right to development order approval; second by Chair Zuba.

Ms. Shamp remarked that she would vote on the basis of the music.

VOTE: Motion failed; 3-3 with Mr. Steele, Ms. Shamp and Ms. Katt dissenting and Ms. Plummer excused.

VI. SEZ2015-0007

A special exception in the DOWNTOWN zoning district to expand the outdoor consumption on premises (4COP) approval for the Pierside Grill Restaurant to include an additional 320 square foot area in Times Square consistent with the recently adopted Administrative Code.

Mr. Noble remarked that the request was to seek approval to extend the COP. Martin York, applicant, stated that he wanted to have a presence in Times Square.

Ms. Shamp expressed concern that the area wasn't adjacent to the restaurant and she questioned whether the Town would lose public seating. Mr. Noble replied that the benches and palm trees would stay and he referred to the aerial map. Mr. York stated that his understanding was that he would have to pay to relocate the benches within Times Square. Discussion was held concerning red squares in Times Square and lease payments. Ms. Shamp commented that the 60 foot right-of-way was being reduced to 20 feet.

MOTION: Mr. Steele moved to approve SEZ2015-0007 with the four conditions listed; second by Ms. Katt.

VOTE: Motion approved; 5-1 with Ms. Shamp dissenting and Ms. Plummer excused.

VII. SEZ2015-0008

A special exception in the DOWNTOWN zoning district to expand the outdoor consumption on premises (4COP) approval for the Sunset Beach Tropical Grill Restaurant to include an additional 160 square foot area in Times Square consistent with the recently adopted Administrative Code.

Ms. Shamp felt the request encroached on public space. Mr. Noble read the conditions of approval provided in the packet. Ms. Shamp identified errors in the staff report. Mr. Noble replied that corrections would be made.

MOTION: Mr. Steele moved to approve SEZ2015-0008 with the four conditions listed as corrected on Page 7; second by Ms. Katt.

VOTE: Motion approved; 5-1 with Ms. Shamp dissenting and Ms. Plummer excused.

VIII. SEZ16-0001

A special exception in the DOWNTOWN zoning district to grant a consumption on premises (COP) and to approve 836 square feet of outdoor seating for the new Fish House Restaurant located at 320 Old San Carlos Boulevard.

Mr. Noble distributed revisions to certain conditions. He stated the request was to establish the initial COP for the Fish House as well as the outdoor seating area in front of the Fish House. He discussed the shared parking lot.

Terry Lenick, attorney, stated that the conditions of approval on Page 8 and the handout provided by Mr. Noble were all they requested. He discussed the conditions and stated that they agreed with all of them. Mr. Steele clarified that 15 parking spaces were required. Mr. Noble suggested that Condition 1 be revised to read: ~~with additional~~ to which includes.

MOTION: Ms. Shamp moved to approve SEZ16-0001 with the conditions of approval, findings as in the staff report and revised staff report conditions of approval of the five conditions and include the change as mentioned, which says which includes in the square footage; second by Ms. Katt.

VOTE: Motion approved; 6-0 with Ms. Plummer excused.

IX. LPA MEMBER ITEMS AND REPORTS

Ms. Shamp stated that HPB items may come up soon.

Mr. Butcher brought up the Myerside BNB. Ms. Will stated that they were limited to weekly rentals in their current state and when they become a BNB, nightly rentals would be permitted. Ms. Shamp questioned whether the minutes needed to be corrected to reflect that nightly rentals were permitted with BNBs. Town Attorney Lehnert questioned whether LPA members would change their vote based on the

new information. LPA members stated they would not have changed their vote. No additional action was necessary.

Mr. Butcher was pleased that sidewalks were being installed.

X. LPA ATTORNEY ITEMS - no items.

XI. COMMUNITY DEVELOPMENT ITEMS - no items.

XII. ITEMS FOR NEXT MONTH'S AGENDA

XIII. PUBLIC COMMENT

Joe Stockton, resident, suggested that the LPA meetings be live streamed.

XIV. ADJOURNMENT

MOTION: Ms. Katt moved to adjourn the meeting; second by Mr. Durrett.

VOTE: Motion approved; 6-0 with Ms. Plummer excused.

Meeting adjourned at 10:42 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

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