

**RESOLUTION NUMBER 23-87**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230126 TO TEMPORARILY ALLOW OUTDOOR CONSUMPTION ON PREMISES WITH A RETAIL USE AND CONDITIONS FOR THE PROPERTY LOCATED AT 163 OLD SAN CARLOS BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, applicant Suzanne Bahan is requesting a special exception for the use of consumption on premises outdoors within 500 feet of a park, in the Downtown zoning district; and

**WHEREAS**, the STRAP number for the subject property is 24-46-23-W3-0050A.0140

**WHEREAS**, the Property is located in the “Pedestrian Commercial” category of the Future Land Use Map of the Comprehensive Plan and the “Downtown” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on August 8, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA voted 4-0 to recommend approval of the special exception with conditions; and

**WHEREAS**, on August 21, 2023 the Town Council held a duly noticed 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 Section 34-88 of the LDC; 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:**

**Section 1.** The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested Special Exception does meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES the special exception for the use of permanent shared parking in the Downtown zoning district.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards 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.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

Section 4. If the Town Council approves/denies the requested special exception and the following conditions of approval are imposed on the Applicant and the Property:

- A. A. The 2 COP is only valid in conjunction with a retail sales operation within the same business.
- B. All music and entertainment on the property will be in compliance with the Town's noise regulations.
- C. No consumption of alcohol shall be permitted outside the fenced area, as depicted on the site plan attached.
- D. This resolution shall only be in effect until such time as a certificate of occupancy has been granted for the reconstruction of the building at 185 Old San Carlos Blvd. Upon granting a certificate of occupancy for 185 Old San Carlos, Resolution 21-46 shall be reinstated, and this resolution shall expire. This resolution shall come back for review by the Council every 12 months to ensure the applicant is making progress towards the reconstruction of 185 Old San Carlos. The applicant will not be required to submit applications or pay additional fees for the annual review.
- E. Any violation of the conditions of approval shall render the special exception null and void.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Council Member Woodson, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	<u>Aye</u>
Jim Atterholt, Vice Mayor	<u>Absent</u>
John R. King	<u>Aye</u>
Bill Veach	<u>Aye</u>
Karen Woodson	<u>Aye</u>

ADOPTED this 21<sup>st</sup> day of August, 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

*Dan Allers*

Dan Allers (Nov 19, 2023 06:17 EST)

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Dan Allers, Mayor

**ATTEST:**

*Amy Baker*

AMY BAKER (Nov 27, 2023 09:33 EST)

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Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

*Becky Vose*

Becky Vose (Nov 19, 2023 09:33 EST)

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16<sup>th</sup> day of November 2023.