

RESOLUTION NUMBER 24-56

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230302, REQUESTING CONSUMPTION ON PREMISES FOR A RESTAURANT WITH A BAR/ COCKTAIL LOUNGE THAT IS VISIBLE FROM THE EXTERIOR OF THE RESTAURANT PER SEC. 34-1264(B)(2)A.3., FOR THE PROPERTY LOCATED AT 450 HARBOR COURT; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR 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, Freeland FL Holdings LLC, owners of the property situated at 450 Harbor Court, is requesting a special exception which requires Requesting a Special Exception for Consumption on Premises for a restaurant with a bar/ cocktail lounge that is visible from the exterior of the restaurant per Sec. 34-1264(b)(2)a.3. and for live and amplified music; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-00027.0000; and

WHEREAS, the Property is located in the "Marina" category of the Future Land Use Map of the Comprehensive Plan and the "Commercial Marina" 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 March 12, 2024, 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 34-87 of the LDC. The LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance; and

WHEREAS, on April 1, 2024, and on April 4, 2024 the Town Council held duly noticed public hearings 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 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve with conditions 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/ did not meet its burden of proof that the requested special exception does meet the requirements of the Town Comprehensive Plan and LDC and approving with conditions the special exception is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES WITH CONDITIONS a request for special exception for consumption on premises for a restaurant with a bar/ cocktail lounge that is visible from the exterior of the restaurant per Sec. 34-1264(b)(2)a.3. and for live and amplified music.

Section 3. In approving with conditions 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; and

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

- A. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- B. Lighting must be downward directed, shielded and may not create glare off of property.
- C. The special exception to allow an outdoor bar shall be reviewed for continuing appropriateness every 6 months from the date of this resolution until 1) construction of a new building has begun; 2) upon expiration of the temporary permit; or 3) upon mandate from a state or federal agency, whichever happens first. The special exception shall expire if the applicant fails to coordinate with staff and attend the semi-annual public hearing review.
- D. Live music is allowed on 450 Harbor Court but drums are not allowed as part of the entertainment.
- E. Amplified music is allowed on 450 Harbor Court until 6:30pm Sunday through Thursday, after which amplified music may not be louder than 65-decibels as long as the other conditions of approval are upheld.
- F. Amplified music is allowed on 450 Harbor Court on Friday and Saturday and will be controlled by the Town's noise ordinance (LDC sec. 14-23; Table-1), as long as the other conditions of approval are upheld.
- G. The variance shall only apply to the lot as shown on the provided site plan.
- H. A hurricane evacuation and container removal plan shall be created and submitted to the Town no later than June 1, 2024. The plan shall be implemented 1) in the event of a named 2024 or 2025 storm necessitating a Declaration of a Local or State of Emergency, which includes the geographic area of Lee County, or 2) at the discretion of the Building Official. The plan shall require the removal of all personal property used in the business from the site including but not limited to tables, chairs, the bar, the tent, stages, bathrooms, the food truck, merchandise and display, speakers, food prep equipment, and storage boxes. The plan shall require the bar, food truck, bathrooms, and merchandise display to be towed by a light utility vehicle.
- I. Speakers shall be positioned to direct music away from residential neighborhoods.

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

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 4th day of April 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL



Dan Allers, Mayor

ATTEST:



Amy Baker, Town Clerk

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



Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 5th day of April 2024.

