

Attachment B



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, eleven (11) copies and one digital/electronic copy* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application.

PROJECT NUMBER: SEE 2015-0002 DATE: 8-19-2015

Site Address: 1131 First St. Fort Myers Beach, FL 33931

STRAP Number: 24-46-23-w3-00004 0000

Applicant: Nervous Nellies Restaurant Phone: _____

Contact Name: Robert Fowler Sr. "Agent" Phone: 239-707-5113

Email: robsr@fowlercompany.com Fax: None

Current Zoning District: Downtown Zoning District

Future Land Use Map (FLUM) Category: Pedestrian Commercial

FLUM Density Range: N/A Platted Overlay: YES NO

ACTION REQUESTED

- Special Exception Modification
- Variance
- Conventional Rezoning
- Planned Development Commercial Residential
- Master Concept Plan Extension
- Appeal of Administrative Action
- Vacation of Platted Right-of-way and Easement
- Other - cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART II — Nature of Request

Requested Action (each request requires a separate application)

- Special Exception Modification to Existing Special Exception
- Variance from LDC Section _____
- Conventional Rezoning from _____ to _____
- Planned Development
 - Rezoning from _____ to Commercial PD Residential PD
 - Amendment. List the project number: _____
 - Extension/reinstatement of Master Concept Plan. List project number: _____
- Appeal of Administrative Action
- Vacation Right-of-Way Easement
- Other. Please Explain: _____

PART III — Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

- Code Section: N/A Description: _____

- Code Section: _____ Description: _____

- Code Section: _____ Description: _____

PART IV — Property Ownership

- Single Owner (individual or husband and wife)
 - Name: Barrier Islands Management, LLC Phone: _____
 - Mailing Address: 1136 W. Shore Drive, Big Pine Key, FL 33043
 - Email: islandfoodgroup@yahoo.com Fax: _____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	N/A	Percentage of Interest
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address	N/A	Percentage of Ownership
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	N/A	Percentage of Stock
_____		_____
_____		_____
_____		_____
_____		_____

Date of Contract: _____

PART V - Property Information

A. Legal Description:

STRAP: 24-46-23-W3-00004.0000

Property Address: 1131 First St. Fort Myers Beach, L 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? No. Attach a legible copy of the legal description as Exhibit 5-1.

Yes. Property identified in subdivision: _____

Book: 1246 Page: 0118 Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 5 125 feet

Depth (please provide an average width if irregular in shape) _____ 100 feet

Frontage on street: 135 feet. Frontage on waterbody: _____ feet

Total land area: 12500 acres square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Located immediately to the Northwest side of Sky Bridge

Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

There are no deed restrictions and/or covenants on the subject property.

A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.



Lee County Property Appraiser

Kenneth M. Wilkinson, C.F.A.

GIS Department / Map Room

Phone: (239) 533-6159 • Fax: (239) 533-6139 • eMail: MapRoom@LeePA.org

VARIANCE REPORT

Date of Report: 8/13/2015 11:17:57 AM
Buffer Distance: 500 ft
Parcels Affected: 88
Subject Parcels: 24-46-23-W3-00004.0000

<u>OWNER NAME AND ADDRESS</u>	<u>STRAP AND LOCATION</u>	<u>LEGAL DESCRIPTION</u>	<u>MAP INDEX</u>
BARRIER ISLANDS MANAGEMENT LLC 16020 COOK RD FORT MYERS, FL 33908	24-46-23-W3-00026.0000 645 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	PAR LYING E OF SAN CARLOS BLVD DESC OR 1534/1849 LESS CONDO/C/E PARCEL	2
FREELAND GEORGE T 4830 GRIFFIN BLVD FORT MYERS, FL 33908	24-46-23-W3-00026.0020 450 HARBOR CT FORT MYERS BEACH FL 33931	PARL IN SE 1/4 SEC 24 TWP 46 RGE 23 DESC OR 1447 PG 1434	3
BARRIER ISLANDS MANAGEMENT LLC 16020 COOK RD FORT MYERS, FL 33908	24-46-23-W3-00026.0030 441/445 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BEG AT A CONC MONUMENT 3 FT SE OF SELY COR MATANZAS VIEW RUN N 65 DEG	4
FREELAND GEORGE T 4830 GRIFFIN BLVD FORT MYERS, FL 33908	24-46-23-W3-00027.0000 450 HARBOR CT FORT MYERS BEACH FL 33931	PARL IN SE 1/4 DESC OR 1656/ 2886+MATANZAS VIEW BLK B PB9/40 PT LT 21 + SUB LAND	5
FIRST STREET RESTAURANTS INC 440 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00201.0030 1025 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 1 PB 9 PG 9 LOTS 3 + 4	6
ESTERO BAY HOTEL COMPANY 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00201.0070 1047/1049 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.1 PB9 PG 9 LOT 7 LESS RW OR 2364/2893	7
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0010 440 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOT 1	8
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0020 430 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOT 2	9
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0030 420 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOTS 3 4 5	10
NAPPO JOSEPH + CHRISTINE 45 SAGAMORE AV OCEANPORT, NJ 07757	24-46-23-W3-00202.0060 1011 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 6	11
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0090 1037/1039 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOTS 9 + 10	12
3 SUNS MANAGEMENT LLC 1051 THIRD ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0110 1041 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOT 11	13
3 SUN MANAGEMENT LLC 1051 THIRD ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0120 1051 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 12 LESS OR 2325/0292	14
ESTERO BAY HOTEL COMPANY 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0130 CORNER LOT FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOTS 13 + 14 LESS RW OR 2311/2803	15
PIERHOUSE-FT MYERS BEACH LTD 1000 ESTERO BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0180 1030 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 18	16

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	MAP INDEX
BARR STANTON TR 9851 CLYDE RD FENTON, MI 48430	19-46-24-W4-0150E.0190 402/406 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 N 30 FT LOTS 18 + 19 + S 30 FT LOT 20 LESS R/W 2353/3036 LESS R/W OR 2370/0201	38
ESTERO BAY HOTEL COMPANY 416 CRESCENT ST FORT MYERS BEACH, FL 33931	19-46-24-W4-0150E.0210 414/416 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADDN BLK E PB4/46 PT LTS 20THRU25LT 26 LES R/W OR 2353 PG 3036 + OR 3189 PG 3751	39
ESTERO BAY HOTEL COMPANY 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0150 1042/1044 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 15 LESS R/W OR 2311/2803	40
TOWN OF FORT MYERS BEACH PO BOX 3077 FORT MYERS BEACH, FL 33932	24-46-23-W3-00203.019A THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 3 PB 9 PG 9 LOT 19 AS DESC IN OR 3176 PG 330 BLDG ASSESSED ON 24-46-23-W3- 00203.0190 AS INCOME PARCEL TILL 2008	41
HARBOUR HOUSE AT THE INN	24-46-23-W3-04200.00CE 450 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN DESC IN INST #2010000012068 COMMON ELEMENT	42
OBERG JAMES A + AMANDA A 13967 78TH ST NE HOOPLE, ND 58243	24-46-23-W3-04200.0201 450 OLD SAN CARLOS BLVD #201 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 201	42
OBERG JAMES A + AMANDA A 13967 78TH ST NE HOOPLE, ND 58243	24-46-23-W3-04200.0202 450 OLD SAN CARLOS BLVD #202 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 202	42
JENKINS FMB LLC 4407 SE 19TH PL CAPE CORAL, FL 33904	24-46-23-W3-04200.0203 450 OLD SAN CARLOS BLVD #203 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 203	42
JAGGR FLORIDA LP 235 EUGENIE ST W WINDSOR, ON N8X 2X7 CANADA	24-46-23-W3-04200.0204 450 OLD SAN CARLOS BLVD #204 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 204	42
GHANEM GEORGE + ROSE 12891 TERABELLA WAY FORT MYERS, FL 33912	24-46-23-W3-04200.0205 450 OLD SAN CARLOS BLVD #205 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 205	42
BEACH AT HARBOUR HOUSE LLC 1101 JACKSON HOLE DR BLACKLICK, OH 43004	24-46-23-W3-04200.0206 450 OLD SAN CARLOS BLVD #206 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 206	42
STUDE INVESTMENTS LLC 483 LUNA BELLA LANE NEW SMYRNA BEACH, FL 32168	24-46-23-W3-04200.0207 450 OLD SAN CARLOS BLVD #207 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 207	42
WILHELM THOMAS D + LYNNE E N 1303 PALISADES DR APPLETON, WI 54915	24-46-23-W3-04200.0208 450 OLD SAN CARLOS BLVD #208 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 208	42
ADVANTAIRA TRUST LLC 4753 ESTERO BLVD #1103 FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.0209 450 OLD SAN CARLOS BLVD #209 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 209	42
MOORE BOB D 128 FRONT ST RIPLEY, OH 45167	24-46-23-W3-04200.0210 450 OLD SAN CARLOS BLVD #210 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 210	42
SAWYER RICHARD R TR EST PHILIP J BOND 10104 SUGAR MAPLE LANE FORT MYERS, FL 33913	24-46-23-W3-04200.0211 450 OLD SAN CARLOS BLVD #211 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 211	42

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	MAP INDEX
CAMPBELL GORDON + PAULETTE 311 CAVENDISH DR ANCASTER, ON L9G 3Z1 CANADA	24-46-23-W3-04200.0311 450 OLD SAN CARLOS BLVD #311 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 311	42
FRASCHETTI EDWARD TR 4358 KINGS FOREST BLVD RICHFIELD, OH 44286	24-46-23-W3-04200.0312 450 OLD SAN CARLOS BLVD #312 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 312	42
IMPACT USA INC 19540 PROGRESS DR STRONGSVILLE, OH 44149	24-46-23-W3-04200.0313 450 OLD SAN CARLOS BLVD #313 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 313	42
IMPACT USA INC 19540 PROGRESS DR STRONGSVILLE, OH 44149	24-46-23-W3-04200.0314 450 OLD SAN CARLOS BLVD #314 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 314	42
FRASCHETTI EDWARD TR 4358 KINGS FOREST BLVD RICHFIELD, OH 44286	24-46-23-W3-04200.0315 450 OLD SAN CARLOS BLVD #315 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 315	42
BAHLKE WILLIAM P + ALMEDA A 804 SOUTH ST APT 4 KEY WEST, FL 33040	24-46-23-W3-04200.0316 450 OLD SAN CARLOS BLVD #316 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 316	42
CIARAMITA PETER J + LYNNE TR 6311 BALD EAGLE RD RACINE, WI 53406	24-46-23-W3-04200.0317 450 OLD SAN CARLOS BLVD #317 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 317	42
MILLER BRIAN 112 MILLER RD SPRING MILLS, PA 16875	24-46-23-W3-04200.0318 450 OLD SAN CARLOS BLVD #318 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 318	42
T + J HOMES SWFL LLC 450 OLD SAN CARLOS BLVD #G101 FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G101 450 OLD SAN CARLOS BLVD #G101 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G101	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G102 450 OLD SAN CARLOS BLVD #G102 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G102	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G103 450 OLD SAN CARLOS BLVD #G103 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G103	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G104 450 OLD SAN CARLOS BLVD #G104 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G104	42
HARBOUR HOUSE AT THE INN 450 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G105 450 OLD SAN CARLOS BLVD #G105 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G105	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G106 450 OLD SAN CARLOS BLVD #G106 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G106	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G107 450 OLD SAN CARLOS BLVD #G107 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G107	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G108 450 OLD SAN CARLOS BLVD #G108 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G108	42

VARIANCE REPORT

8/13/2015

Subject Parcels: 1 Affected Parcels: 89 Buffer Distance: 500 ft



24-46-23-W3-00004.0000

240 180 120 60 0 240 Feet

THE INFORMATION CONTAINED IN THIS REPORT IS GOVERNED BY FLORIDA STATUTE 119.071 (GENERAL EXEMPTIONS FROM INSPECTION OR COPYING OF PUBLIC RECORDS).

PART VII

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Robert B. Fowler, Sr. (name), as Authorized Agent (title) Of Barrier Island Management (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

- 1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Lec County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

The Fowler Company, LLC

Name of Entity (corporation, partnership, LLP, LLC, etc)

[Handwritten Signature]

Signature

CEO

Title

Robert B. Fowler, Sr.

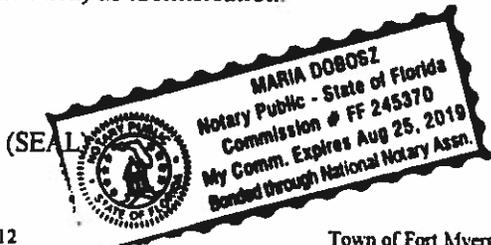
Typed or Printed Name

8-10-2015

Date

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 8-10-2015 (date) by Robert B Fowler, Sr (name of person providing oath or affirmation), who is personally known to me or who has produced (type of identification) as identification.



[Handwritten Signature]

Signature

MARIA DOBOSZ

Printed Name

- required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map.
 - Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 4-3. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 4-4.

Explanatory Notes - Part V

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line.
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line.
- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which).
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information.
- F. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-A

**Additional Required Information for a
Modification to Existing Special Exception Application**

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name:	Nervous Nellies Restaurant
Authorized Applicant:	Robert B. Fowler, Sr.
LeePA STRAP Number(s):	24-46-23-W3-00004.0000

Current Property Status:
Current Zoning: Downtown Zoning District
Future Land Use Map (FLUM) Category: Pedestrian Commercial
Platted Overlay? yes <input checked="" type="checkbox"/> no FLUM Density Range: N/A

Requested Action:

<input type="checkbox"/> Use of premises in the EC (Environmentally Critical) zoning district for:
<input checked="" type="checkbox"/> Use of premises in the <u>Downtown</u> zoning district for: Restaurant

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a 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.

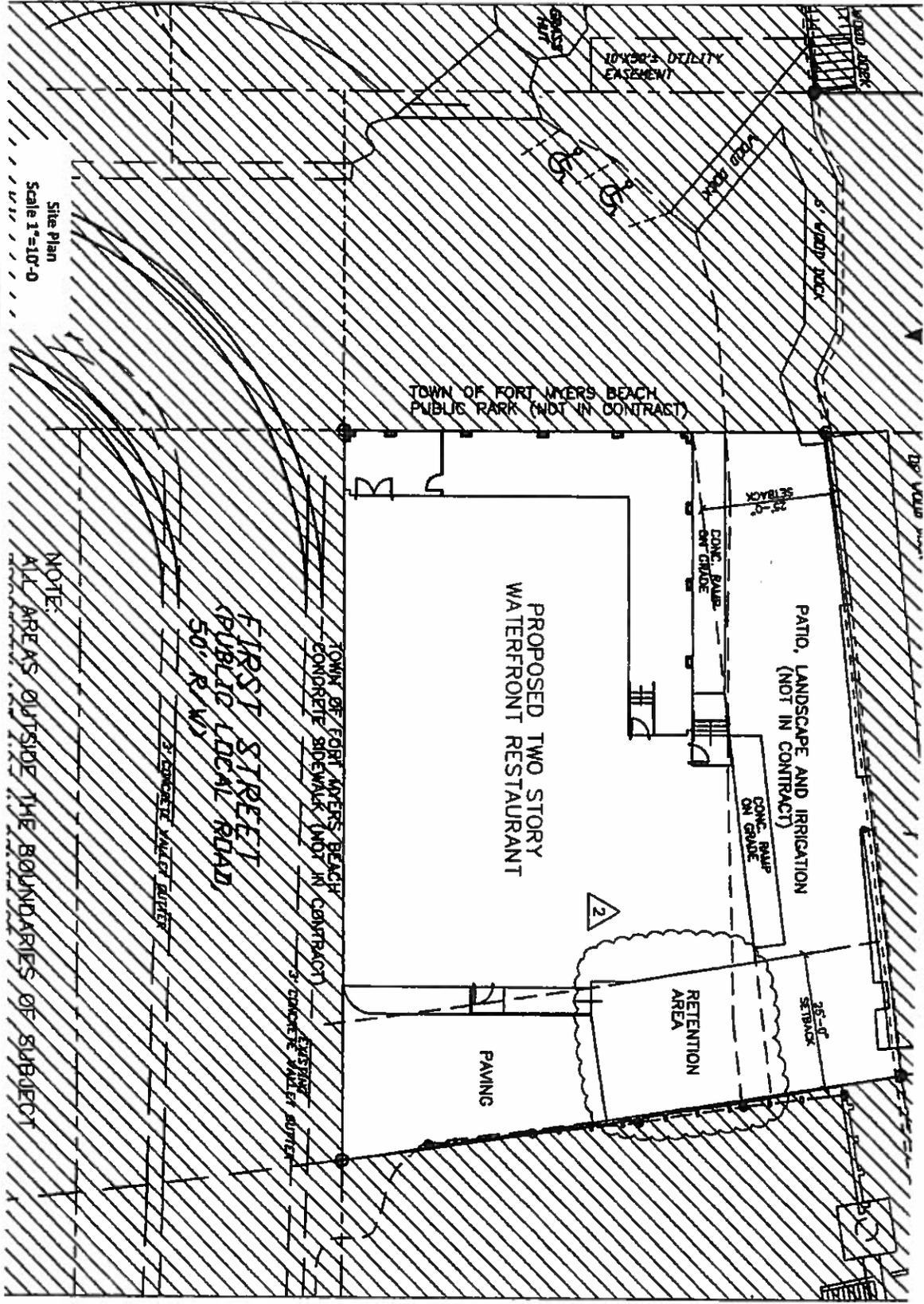
“Granting the requested special exception could impact surrounding properties as follows...”

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for special exception consist of the Public Hearing form and the supplemental form PH-A. Both parts of the application form must be completed and submitted.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.



Site Plan
Scale 1"=10'-0"

NOTE:
ALL AREAS OUTSIDE THE BOUNDARIES OF SUBJECT



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

SUPPLEMENT AA-C

Consumption-on-Premises

This is the second part of a two part application. Please be sure to include the Administrative Action Application, which requires general information, with this supplemental form requiring specific information regarding a **Consumption-on-Premises** request. (Only use this form if LDC Section 34-1261 through 34-1264 clearly allows administrative approval of your request, otherwise use the Public Hearing form and Special Exception Supplement.) Please submit *two paper copies* and *one digital/electronic copy* of all required applications, supplemental information, exhibits and documents.

PROJECT NUMBER: _____ DATE: _____

Request: Indoor On-Premise Outdoor On-Premise Expansion (Ord.12-03)

Name of Establishment: Nervous Nellies Restaurant

Site Address: 1131 First St. Fort Myers Beach, FL 33931

STRAP Number (use additional sheets if necessary):

24-46-23-W3-00004.0000

Current Zoning: Downtown Zoning District Future Land Use: Pedestrian Commercial

Waterfront: No Yes If yes, provide width along waterfront: 125 ft

Applicant: Nervous Nellies Restaurant Phone: 239-707-5113

Email: robsr@fowlercompany.com Fax: N/A

Type of License: 2COP 4COP SRX 4COP Other: Existing

Type of Establishment

- | | |
|--|--|
| <input type="checkbox"/> Bar/Cocktail Lounge | <input type="checkbox"/> Charter/Cruise Ship |
| <input type="checkbox"/> Golf Course Clubhouse | <input type="checkbox"/> Hotel/Motel |
| <input type="checkbox"/> Membership Club | <input type="checkbox"/> Restaurant |

Restaurant w/ Outdoor Seating (Ord. 12-03)

Requested Hours of Operation: As existing/approved

(Please note outdoor, on the sand COP is limited to one hour after sunset or 9pm whichever is earlier)

Required Items:

- Notarized authorization from Property Owner(s) to apply for permit
- Surrounding Area Map depicting all uses within 500 ft of the subject property
- Floor Plan of interior layout **N/A**
- Site Plan of entire subject property

Additional Required Items (For properties effected by Ord. 12-03 only)

- Recent Survey depicting:
 - Mean High Water Line (MHWL) and/or Erosion Control Line (ECL)
 - EC Zoning District Boundary and/or 1978 Coastal Construction Control Line
 - Building/Deck/Patio Footprint(s) **See Survey**

- Site Plan depicting:
 - Area of expansion **No expansion**
 - Setbacks and dimensions per Ord. 12-03 **No Change**
 - MHWL or ECL
 - 1978 CCCL

*** See LDC Section 34-1261 through 34-1264 for rules and regulations regarding alcoholic beverage consumption-on-premises permitting. Please ensure that the requested consumption-on-premises use does not require a Special Exception before using this form.

*** Please note this application does not include approvals for any outdoor entertainment (live or pre-recorded) or special events.



Additions to Request for Modification to an Existing Special Exception (COP)

This response relates to an email from Matt Noble, dated October 1, 2015 requesting additional information pertaining to the Owner's of Nervous Nellies Restaurant request to permit amplified music within the limitations set forth in the Town of Ft. Myers Beach's Ordinance Amending Chapter 14, Article 2, Noise Control.

Please clarify what the application is specifically proposing to modify in the existing approval, Resolution 03-36.

This application proposes to delete the language, "is limited to non-amplified acoustical music" found in condition #3 of the approved Resolution 03-36.

Is the applicant proposing to modify approved hours that outdoor music or entertainment is performed?
No. No other modifications are requested.

Please present the proposed modifications in a strike-thru underlined format from the adopted conditions.

Resolution 03-36, Condition #3. Outdoor music or entertainment is limited to 11PM ~~and live music is limited to non-amplified acoustical music.~~ (see attached Exhibit "A")

The application has not addressed what impact the request could have on surrounding properties.

The Town of Ft. Myers Beach considered impacts to surrounding properties when it adopted its new Amended Noise Ordinance. The impact on surrounding properties related to this application will be consistent and compliant with the current Town's Amended Noise Ordinance limiting the extent to which noise may be transmitted to any surrounding properties. This application requests nothing more than what is currently permitted by Ordinance for the entire Island and will bring the applicant to a position of equity with all other property owners on the Island.

Please provide information concerning where the outdoor entertainment will be performed and the distance to the nearest residential units.

Although there is no condition within the Town's Amended Noise Ordinance related to the location of noise emission, the applicant has agreed to impose upon himself a condition that the amplified music will be placed in the southern half of the outdoor seating area furthest away from the adjacent Snug Harbor Condominium. Distance to the nearest residential units building is approximately 180 feet from the nearest point where the applicant has agreed to amplify music. (See Exhibit "B")

Is the applicant proposing any conditions to address neighborhood compatibility?

Yes. Regardless of the fact that the Town's Amended Noise Ordinance does not condition locations of noise emission, the applicant agrees to condition the location of amplified music

to the southern half of the outdoor seating area currently permitted for the use of music. This half of the outdoor seating is the half furthest away from the Snug Harbor Condominium.

The application provides that "It is the intent of the Owner to assist in maintaining the level of noise to Ordinance acceptable levels by moving the entertainment to a location furthest away from the nearby condominium.

Though not a condition of the Town's Amended Noise Ordinance, the applicant agrees to condition this application by moving the location of the amplified music to the southern half of the outdoor seating furthest away from the nearby condominium. (see Exhibit "B")

Please indicate this proposed location on a diagram on the site map / exhibit and include in the proposed approval conditions.
(See attached Exhibit "B")

The application does not provide a consistency analysis of the Town's Comprehensive Plan that address specific Goals, Objectives and Policies of the Plan. Please provide the required analysis.

When adopting the new Noise Ordinance, the Town Amended Chapter 14, Article 2 of the Previous Noise Ordinance. When adopting the Amendment, the Town considered and found the Amendment to be consistent with all the Goals, Objectives and Policies of the Plan. This application requests nothing contrary to the Town's Amended Ordinance, is compliant with the Town's Amended Noise Ordinance and accordingly the application is consistent with the Town's Comprehensive Plan.

Please provide a copy of Resolution 03-36 in your submittal materials so that this Resolution is part of the record of this request.

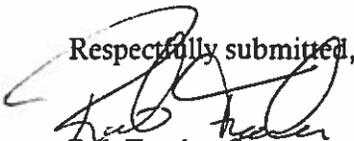
Please see copy of the Resolution 03-36 attached as Exhibit "C")

Provide a site plan consistent with the LDC sec. 34-203 requirements.

Please see attached site plan. (see Exhibit "B")

Thank you for all the attention you have given this application.

Respectfully submitted,



Rob Fowler, Sr.

Rob Fowler

EXHIBIT "A"

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 03- 36

WHEREAS, Snug Harbor Restaurant has requested the expansion of an existing Special Exception for outdoor seating area associated with food service and on premises consumption of alcoholic beverages located in the Downtown zoning District; and,

WHEREAS, the subject property is located at 1131 First Street, Ft. Myers Beach, and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00004.0000, and the legal description is provided in Exhibit A which is attached hereto and incorporated herein by reference; and,

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on October 14, 2002, and after giving full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons, the LPA recommended approval of the Applicant's Special exception request with the following conditions:

1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the Snug Harbor Restaurant, as approved under VAR2001-00053.
2. The total outdoor seating capacity is limited to 235 seats (an addition of 65 seats to the 170 seats approved under Resolution 02-40, Case No. COP2002-00095). The location of the outdoor seating is specified in Exhibits B, C, and D, attached hereto and incorporated herein by reference. The outdoor seating is further limited to no more than 72 seats in the 2,500 +/- sq. ft. "Courtyard" area (Exhibit B) and no more than 60 seats in the additional 650 +/- sq. Ft. "Deck Extension" area (Exhibit D) approved for outdoor seating in conjunction with on premises consumption of alcoholic beverages outdoors by this request.
3. Outdoor music or entertainment is limited to 11 PM ~~and live music is limited to non-amplified acoustical music.~~ **PROPOSED STRIKE A**
4. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11 AM and 12 AM, Monday through Thursday and between the hours of 11 AM and 1 AM, Friday and Saturday and between the hours of 12 PM and 10 PM on Sunday.
5. The service area located adjacent to the bridge structure and First Street shall be screened off by the use of an appropriate fence. Staff recommended a 6 foot white pvc fence. The FPL box will also be screened with plantings made up of silver/green buttonwoods that are at least 36 inches tall.

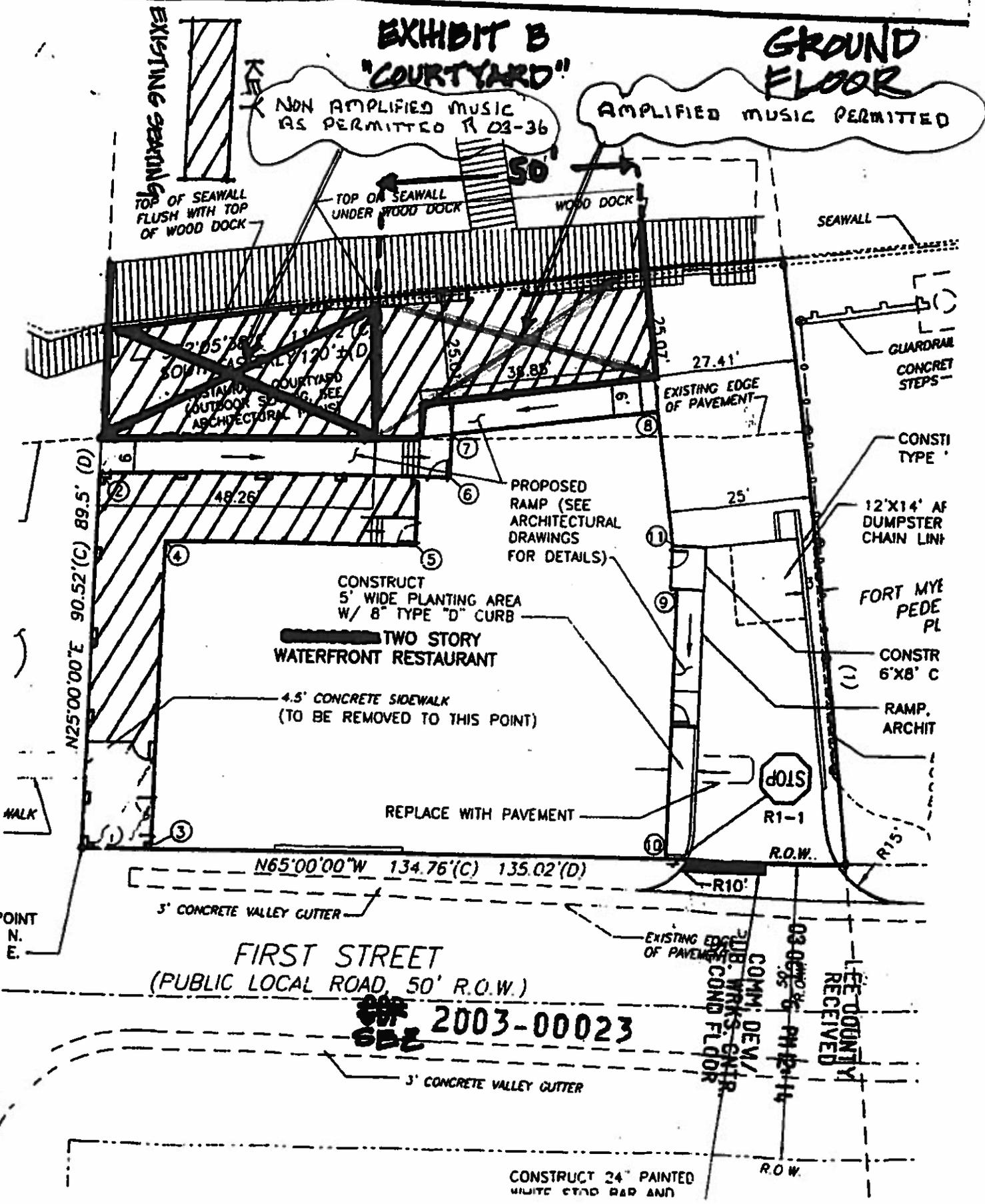
NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested special exception.

EXHIBIT B "COURTYARD"

GROUND FLOOR

NON AMPLIFIED MUSIC
AS PERMITTED R 03-36

AMPLIFIED MUSIC PERMITTED



2003-00023

COMM. DEV./
JOB WORKS ENTR
COND FLOOR
03 06 06 PM 12:14
LEE COUNTY
RECEIVED

CONSTRUCT 24" PAINTED
WHITE STOP BAR AND

EXHIBIT "C"

Rob Fowler

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 03- 36

WHEREAS, Snug Harbor Restaurant has requested the expansion of an existing Special Exception for outdoor seating area associated with food service and on premises consumption of alcoholic beverages located in the Downtown zoning District; and,

WHEREAS, the subject property is located at 1131 First Street, Ft. Myers Beach, and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00004.0000, and the legal description is provided in Exhibit A which is attached hereto and incorporated herein by reference; and,

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on October 14, 2002, and after giving full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons, the LPA recommended approval of the Applicant's Special exception request with the following conditions:

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3. Outdoor music or entertainment is limited to 11 PM and live music is limited to non-amplified acoustical music.
4. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11 AM and 12 AM, Monday through Thursday and between the hours of 11 AM and 1 AM, Friday and Saturday and between the hours of 12 PM and 10 PM on Sunday.
5. The service area located adjacent to the bridge structure and First Street shall be screened off by the use of an appropriate fence. Staff recommended a 6 foot white pvc fence. The FPL box will also be screened with plantings made up of silver/green buttonwoods that are at least 36 inches tall.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested special exception.

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 03- 36**

WHEREAS, Snug Harbor Restaurant has requested the expansion of an existing Special Exception for outdoor seating area associated with food service and on premises consumption of alcoholic beverages located in the Downtown zoning District; and,

WHEREAS, the subject property is located at 1131 First Street, Ft. Myers Beach, and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00004.0000, and the legal description is provided in Exhibit A which is attached hereto and incorporated herein by reference; and,

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on October 14, 2002, and after giving full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons, the LPA recommended approval of the Applicant's Special exception request with the following conditions:

- 1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the Snug Harbor Restaurant, as approved under VAR2001-00053.**
- 2. The total outdoor seating capacity is limited to 235 seats (an addition of 65 seats to the 170 seats approved under Resolution 02-40, Case No. COP2002-00095). The location of the outdoor seating is specified in Exhibits B, C, and D, attached hereto and incorporated herein by reference. The outdoor seating is further limited to no more than 72 seats in the 2,500 +/- sq. ft. "Courtyard" area (Exhibit B) and no more than 60 seats in the additional 650 +/- sq. Ft. "Deck Extension" area (Exhibit D) approved for outdoor seating in conjunction with on premises consumption of alcoholic beverages outdoors by this request.**
- 3. Outdoor music or entertainment is limited to 11 PM and live music is limited to non-amplified acoustical music.**
- 4. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11 AM and 12 AM, Monday through Thursday and between the hours of 11 AM and 1 AM, Friday and Saturday and between the hours of 12 PM and 10 PM on Sunday.**
- 5. The service area located adjacent to the bridge structure and First Street shall be screened off by the use of an appropriate fence. Staff recommended a 6 foot white pvc fence. The FPL box will also be screened with plantings made up of silver/green buttonwoods that are at least 36 inches tall.**

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested special exception.

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested modification:

- 1. The applicant did demonstrate compliance with the Fort Myers Beach Comprehensive Plan.**
- 2. The applicant did demonstrate compliance with the Land Development Code of the Town of Fort Myers Beach.**
- 3. The applicant did demonstrate compliance with the other applicable town ordinances or codes.**
- 4. That the Special Exception, as conditioned, is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan..**
- 5. That the Special Permit, as conditioned, meets all performance and locational standards set forth for the proposed use.**

SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the Snug Harbor Restaurant, as approved under VAR2001-00053.**
- 2. The total outdoor seating capacity is limited to 235 seats (an addition of 65 seats to the 170 seats approved under Resolution 02-40, Case No. COP2002-00095). The location of the outdoor seating is specified in Exhibits B, C, and D, attached hereto and incorporated herein by reference. The outdoor seating is further limited to no more than 72 seats in the 2,500 +/- sq. ft. "Courtyard" area (Exhibit B) and no more than 60 seats in the additional 650 +/- sq. Ft. "Deck Extension" area (Exhibit D) approved for outdoor seating in conjunction with on premises consumption of alcoholic beverages outdoors by this request.**
- 3. Outdoor music or entertainment must cease no later than 11 PM in the "Deck Extension" area.**
- 4. The service of alcoholic beverages in the outdoor seating area shall be limited to the hours of 11 AM and 12 midnight, Monday through Thursday, and between the hours of 11 AM and 1 AM, Friday and Saturday, and between the hours of 12 PM and 10 PM on Sunday.**
- 5. The service area located adjacent to the bridge structure and First Street shall be screened off by the use of a 6 foot pvc fence. The FPL box will also be screened with plantings made up of silver/green buttonwoods that are at least 36 inches tall.**

The foregoing resolution was adopted by the Fort Myers Beach Town Council

upon being put to a vote, the result was as follows:

Howard Rynearson	<u>Aye</u>
Daniel Hughes	<u>Aye</u>
Bill Thomas	<u>Aye</u>
W. H. "Bill" Van Duzer	<u>Aye</u>
Terry Cain	<u>Aye</u>

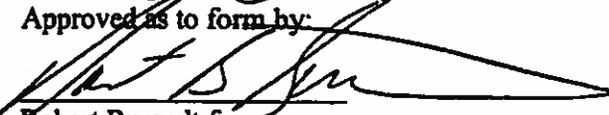
ADOPTED this 10th day of November, 2003.

ATTEST:

By:


Marsha Segal-George, Town Clerk

Approved as to form by:


Robert Burandt for

Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

By:

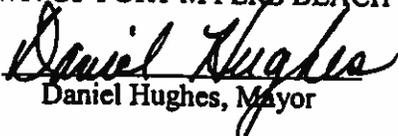

Daniel Hughes, Mayor

EXHIBIT "A"

DESCRIPTION:

AS SHOWN IN OFFICIAL RECORDS BOOK 1834 AT PAGE 1851;) (O.R. BOOK 2565, 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 46 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 PLAT 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 88.47 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE ALONG THE SAID LINE NORTHWESTERLY A DISTANCE OF 136.02 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 885 (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 69.5 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 885; 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 EDMUND 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 885.

Applicant's Legal Checked

by Atty. 010CT03

SEZ 2003-00023

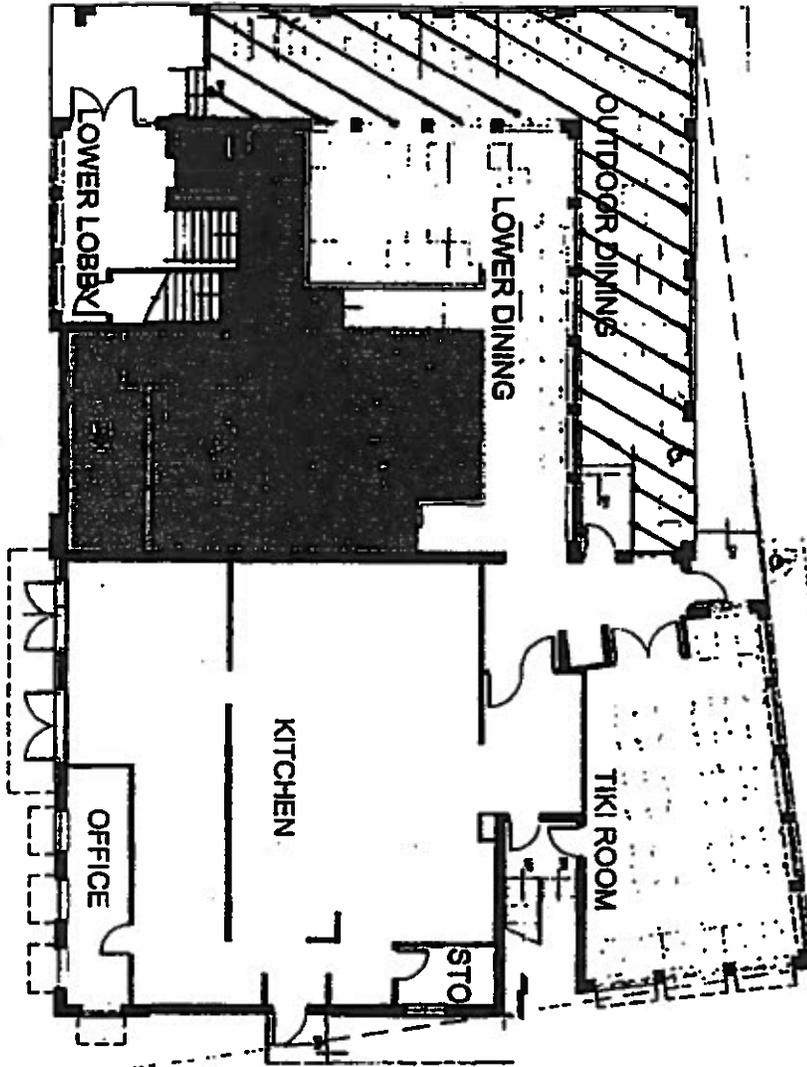
COP

2003-00.023

EXHIBIT C "COVERED PORCH"

FIRST FLOOR

EXISTING SEATING
KEY



GROUND FLOOR PLAN
1" = 16'

952
COP

2003-00023

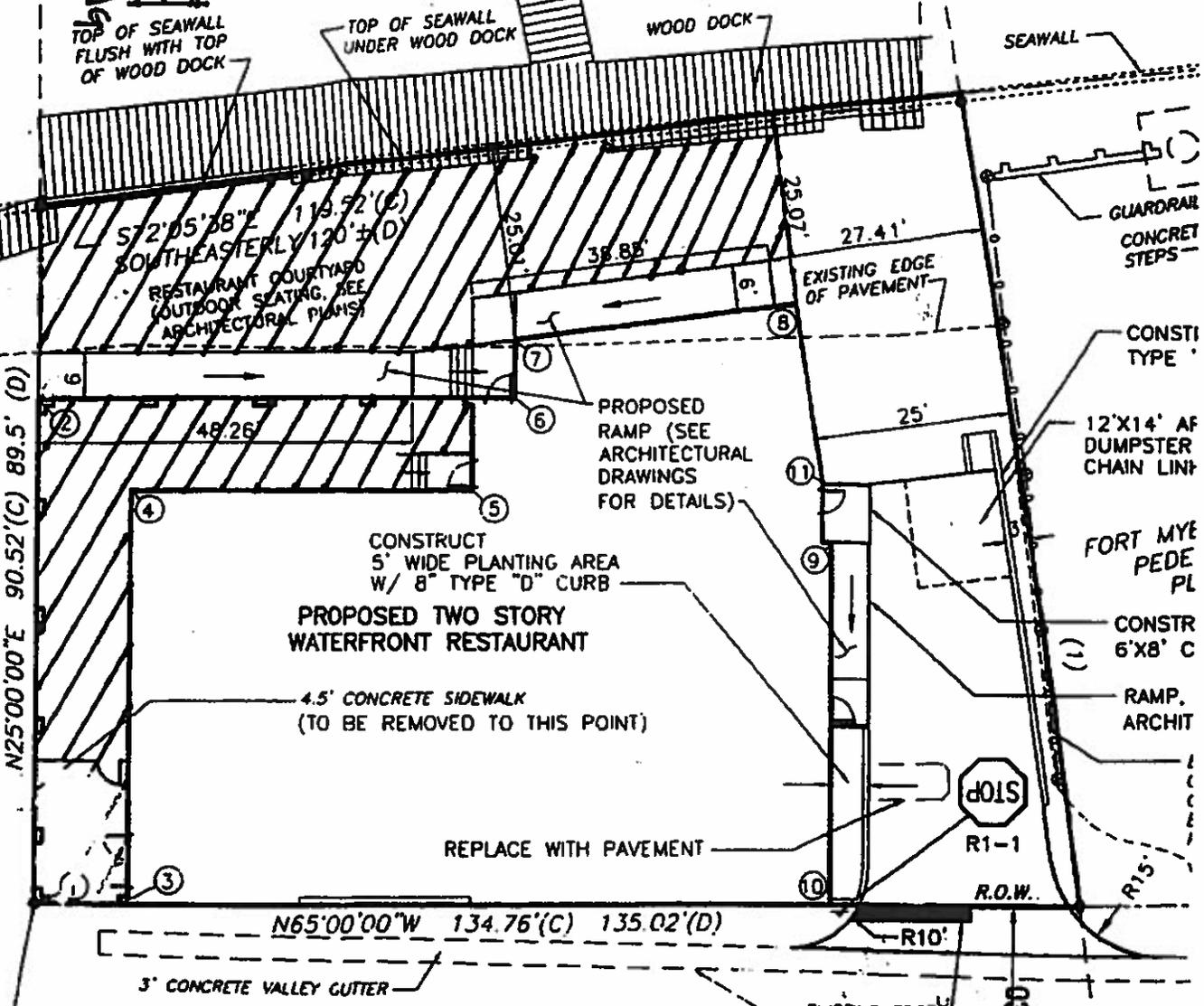
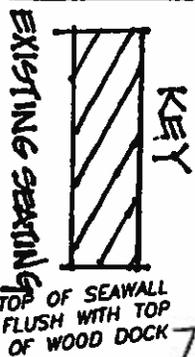
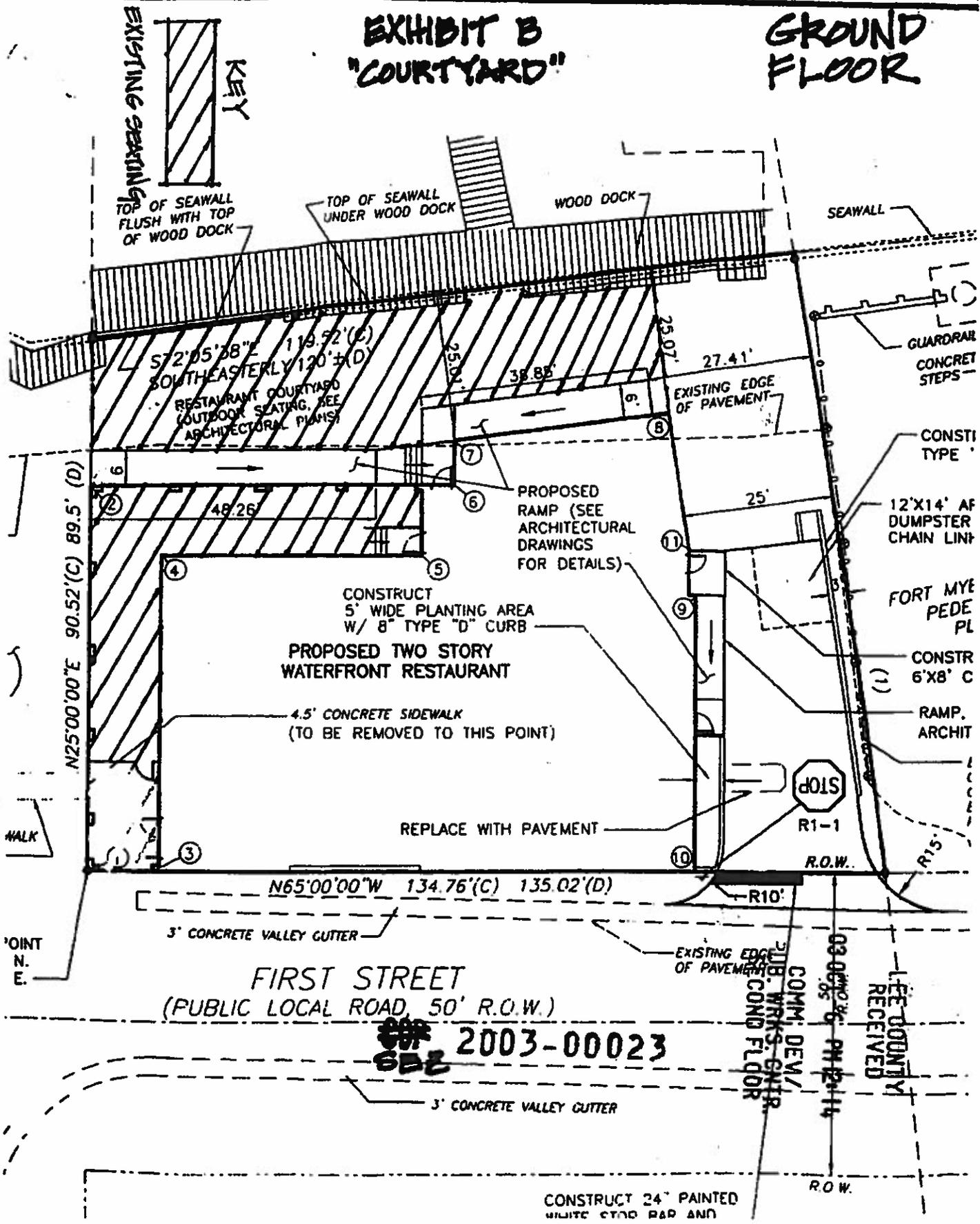
03 OCT -6 PM 12: 44
COMM. DEV./
PUB. WRKS. CNTR.
SECOND FLOOR

LEE COUNTY
RECEIVED

A-3	GROUND FLOOR PLAN	<table border="1"> <tr><th>NO.</th><th>DESCRIPTION</th><th>DATE</th></tr> <tr><td>1</td><td>ISSUED FOR PERMIT</td><td>10/03/03</td></tr> </table>	NO.	DESCRIPTION	DATE	1	ISSUED FOR PERMIT	10/03/03	<p align="center">SNUG HARBOR RESTAURANT FORT MYERS BRACIL, FLORIDA</p> <p><small>DESIGNED BY: [unreadable] ARCHITECTS, P.A. 1000 S. W. 11TH AVE., SUITE 200, FORT MYERS, FLORIDA 33901 TEL: (888) 473-1234 FAX: (888) 473-1234</small></p>	 <p>DONAHUE 180 West Ave. #1000 Fort Myers, FL 33901 Tel: 888-473-1234</p>
NO.	DESCRIPTION	DATE								
1	ISSUED FOR PERMIT	10/03/03								

EXHIBIT B "COURTYARD"

GROUND FLOOR



FIRST STREET
(PUBLIC LOCAL ROAD, 50' R.O.W.)

2003-00023

COMM. DEV./
CUB. WKS. GTR.
COND. FLOOR
03-06-06 PM 12:14
LEE COUNTY
RECEIVED

CONSTRUCT 24\"/>



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, eleven (11) copies and one digital/electronic copy* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application.

PROJECT NUMBER: _____ DATE: _____

Site Address: 1131 First St. Fort Myers Beach, FL 33931

STRAP Number: 24-46-23-w3-00004.0000

Applicant: Nervous Nellies Restaurant Phone: _____

Contact Name: Robert Fowler Sr. "Agent" Phone: 239-707-5113

Email: robsr@fowlercompany.com Fax: None

Current Zoning District: Downtown Zoning District

Future Land Use Map (FLUM) Category: Pedestrian Commercial

FLUM Density Range: N/A Platted Overlay: YES NO

ACTION REQUESTED

SUPPLEMENTAL FORM REQUIRED

- Special Exception Modification
- Variance
- Conventional Rezoning
- Planned Development Commercial Residential
- Master Concept Plan Extension
- Appeal of Administrative Action
- Vacation of Platted Right-of-way and Easement
- Other – cite LDC Section: _____

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART II — Nature of Request

Requested Action (each request requires a separate application)

- Special Exception Modification to Existing Special Exception
- Variance from LDC Section _____
- Conventional Rezoning from _____ to _____
- Planned Development
 - Rezoning from _____ to Commercial PD Residential PD
 - Amendment. List the project number: _____
 - Extension/reinstatement of Master Concept Plan. List project number: _____
- Appeal of Administrative Action
- Vacation Right-of-Way Easement
- Other. Please Explain: _____

PART III — Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

- Code Section: N/A Description: _____

- Code Section: _____ Description: _____

- Code Section: _____ Description: _____

PART IV — Property Ownership

- Single Owner (individual or husband and wife)
 - Name: Barrier Islands Management, LLC Phone: _____
 - Mailing Address: 1136 W. Shore Drive, Big Pine Key, FL 33043
 - Email: islandfoodgroup@yahoo.com Fax: _____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest
N/A	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address	Percentage of Ownership
N/A	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock
N/A	
_____	_____
_____	_____
_____	_____
_____	_____

Date of Contract: _____

PART V - Property Information

A. Legal Description:

STRAP: 24-46-23-W3-00004.0000

Property Address: 1131 First St. Fort Myers Beach, L 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? No. Attach a legible copy of the legal description as Exhibit 5-1.

Yes. Property identified in subdivision: _____

Book: 1246 Page: 0118 Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 5 125 feet

Depth (please provide an average width if irregular in shape) _____ 100 feet

Frontage on street: 135 feet. Frontage on waterbody: _____ feet

Total land area: 12500 acres square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Located immediately to the Northwest side of Sky Bridge

Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

There are no deed restrictions and/or covenants on the subject property.

A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

OLD SAN CARLOS BLVD

SECOND ST

CRESCENT ST

SAN CARLOS BLVD

6106G107
6104030508200510844
042000 042000205
POCE 6105 04200 037 810207 0215
02040211 0204 0206 0204
020203 010203 020303 0310021 0210 0310
02010213 03100305 020303 0305
03030308 0217 0202 0205 0208
03160216 0215 0208
61050205 0205 0205
61050205

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Lee County Property Appraiser

Kenneth M. Wilkinson, C.F.A.

GIS Department / Map Room

Phone: (239) 533-6159 • Fax: (239) 533-6139 • eMail: MapRoom@LeePA.org

VARIANCE REPORT

Date of Report: 8/13/2015 11:17:57 AM
Buffer Distance: 500 ft
Parcels Affected: 88
Subject Parcels: 24-46-23-W3-00004.0000

<u>OWNER NAME AND ADDRESS</u>	<u>STRAP AND LOCATION</u>	<u>LEGAL DESCRIPTION</u>	<u>MAP INDEX</u>
BARRIER ISLANDS MANAGEMENT LLC 16020 COOK RD FORT MYERS, FL 33908	24-46-23-W3-00026.0000 645 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	PAR LYING E OF SAN CARLOS BLVD DESC OR 1534/1849 LESS CONDO/C/E PARCEL	2
FREELAND GEORGE T 4830 GRIFFIN BLVD FORT MYERS, FL 33908	24-46-23-W3-00026.0020 450 HARBOR CT FORT MYERS BEACH FL 33931	PARL IN SE 1/4 SEC 24 TWP 46 RGE 23 DESC OR 1447 PG 1434	3
BARRIER ISLANDS MANAGEMENT LLC 16020 COOK RD FORT MYERS, FL 33908	24-46-23-W3-00026.0030 441/445 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BEG AT A CONC MONUMENT 3 FT SE OF SELY COR MATANZAS VIEW RUN N 65 DEG	4
FREELAND GEORGE T 4830 GRIFFIN BLVD FORT MYERS, FL 33908	24-46-23-W3-00027.0000 450 HARBOR CT FORT MYERS BEACH FL 33931	PARL IN SE 1/4 DESC OR 1656/ 2886+MATANZAS VIEW BLK B PB9/40 PT LT 21 + SUB LAND	5
FIRST STREET RESTAURANTS INC 440 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00201.0030 1025 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 1 PB 9 PG 9 LOTS 3 + 4	6
ESTERO BAY HOTEL COMPANY 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00201.0070 1047/1049 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.1 PB9 PG 9 LOT 7 LESS R/W OR 2364/2893	7
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0010 440 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOT 1	8
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0020 430 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOT 2	9
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0030 420 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOTS 3 4 5	10
NAPPO JOSEPH + CHRISTINE 45 SAGAMORE AV OCEANPORT, NJ 07757	24-46-23-W3-00202.0060 1011 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 6	11
HOUSEBOAT LLC 237 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0090 1037/1039 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOTS 9 + 10	12
3 SUNS MANAGEMENT LLC 1051 THIRD ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0110 1041 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 2 PB 9 PG 9 LOT 11	13
3 SUN MANAGEMENT LLC 1051 THIRD ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0120 1051 THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 12 LESS OR 2325/0292	14
ESTERO BAY HOTEL COMPANY 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0130 CORNER LOT FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOTS 13 + 14 LESS R/W OR 2311/2803	15
PIERHOUSE-FT MYERS BEACH LTD 1000 ESTERO BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0180 1030 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 18	16

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	MAP INDEX
BARR STANTON TR 9851 CLYDE RD FENTON, MI 48430	19-46-24-W4-0150E.0190 402/406 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADD BLK E PB 4 PG 46 N 30 FT LOTS 18 + 19 + S 30 FT LOT 20 LESS R/W 2353/3036 LESS R/W OR 2370/0201	38
ESTERO BAY HOTEL COMPANY 416 CRESCENT ST FORT MYERS BEACH, FL 33931	19-46-24-W4-0150E.0210 414/416 CRESCENT ST FORT MYERS BEACH FL 33931	CRESCENT PARK ADDN BLK E PB4/46 PT LTS 20THRU25LT 26 LES R/W OR 2353 PG 3036 + OR 3189 PG 3751	39
ESTERO BAY HOTEL COMPANY 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-00202.0150 1042/1044 SECOND ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK.2 PB 9 PG 9 LOT 15 LESS R/W OR 2311/2803	40
TOWN OF FORT MYERS BEACH PO BOX 3077 FORT MYERS BEACH, FL 33932	24-46-23-W3-00203.019A THIRD ST FORT MYERS BEACH FL 33931	BUSINESS CENTER BLK 3 PB 9 PG 9 LOT 19 AS DESC IN OR 3176 PG 330 BLDG ASSESSED ON 24-46-23-W3- 00203.0190 AS INCOME PARCEL TILL 2008	41
HARBOUR HOUSE AT THE INN	24-46-23-W3-04200.00CE 450 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN DESC IN INST #2010000012068 COMMON ELEMENT	42
OBERG JAMES A + AMANDA A 13967 78TH ST NE HOOPLE, ND 58243	24-46-23-W3-04200.0201 450 OLD SAN CARLOS BLVD #201 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 201	42
OBERG JAMES A + AMANDA A 13967 78TH ST NE HOOPLE, ND 58243	24-46-23-W3-04200.0202 450 OLD SAN CARLOS BLVD #202 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 202	42
JENKINS FMB LLC 4407 SE 19TH PL CAPE CORAL, FL 33904	24-46-23-W3-04200.0203 450 OLD SAN CARLOS BLVD #203 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 203	42
JAGGR FLORIDA LP 235 EUGENIE ST W WINDSOR, ON N8X 2X7 CANADA	24-46-23-W3-04200.0204 450 OLD SAN CARLOS BLVD #204 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 204	42
GHANEM GEORGE + ROSE 12891 TERABELLA WAY FORT MYERS, FL 33912	24-46-23-W3-04200.0205 450 OLD SAN CARLOS BLVD #205 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 205	42
BEACH AT HARBOUR HOUSE LLC 1101 JACKSON HOLE DR BLACKLICK, OH 43004	24-46-23-W3-04200.0206 450 OLD SAN CARLOS BLVD #206 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 206	42
STUDE INVESTMENTS LLC 483 LUNA BELLA LANE NEW SMYRNA BEACH, FL 32168	24-46-23-W3-04200.0207 450 OLD SAN CARLOS BLVD #207 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 207	42
WILHELM THOMAS D + LYNNE E N 1303 PALISADES DR APPLETON, WI 54915	24-46-23-W3-04200.0208 450 OLD SAN CARLOS BLVD #208 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 208	42
ADVANTAIRA TRUST LLC 4753 ESTERO BLVD #1103 FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.0209 450 OLD SAN CARLOS BLVD #209 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 209	42
MOORE BOB D 128 FRONT ST RIPLEY, OH 45167	24-46-23-W3-04200.0210 450 OLD SAN CARLOS BLVD #210 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 210	42
SAWYER RICHARD R TR EST PHILIP J BOND 10104 SUGAR MAPLE LANE FORT MYERS, FL 33913	24-46-23-W3-04200.0211 450 OLD SAN CARLOS BLVD #211 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 211	42

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	MAP INDEX
CAMPBELL GORDON + PAULETTE 311 CAVENDISH DR ANCASTER, ON L9G 3Z1 CANADA	24-46-23-W3-04200.0311 450 OLD SAN CARLOS BLVD #311 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 311	42
FRASCHETTI EDWARD TR 4358 KINGS FOREST BLVD RICHFIELD, OH 44286	24-46-23-W3-04200.0312 450 OLD SAN CARLOS BLVD #312 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 312	42
IMPACT USA INC 19540 PROGRESS DR STRONGSVILLE, OH 44149	24-46-23-W3-04200.0313 450 OLD SAN CARLOS BLVD #313 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 313	42
IMPACT USA INC 19540 PROGRESS DR STRONGSVILLE, OH 44149	24-46-23-W3-04200.0314 450 OLD SAN CARLOS BLVD #314 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 314	42
FRASCHETTI EDWARD TR 4358 KINGS FOREST BLVD RICHFIELD, OH 44286	24-46-23-W3-04200.0315 450 OLD SAN CARLOS BLVD #315 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 315	42
BAHLKE WILLIAM P + ALMEDA A 804 SOUTH ST APT 4 KEY WEST, FL 33040	24-46-23-W3-04200.0316 450 OLD SAN CARLOS BLVD #316 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 316	42
CIARAMITA PETER J + LYNNE TR 6311 BALD EAGLE RD RACINE, WI 53406	24-46-23-W3-04200.0317 450 OLD SAN CARLOS BLVD #317 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 317	42
MILLER BRIAN 112 MILLER RD SPRING MILLS, PA 16875	24-46-23-W3-04200.0318 450 OLD SAN CARLOS BLVD #318 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT 318	42
T + J HOMES SWFL LLC 450 OLD SAN CARLOS BLVD #G101 FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G101 450 OLD SAN CARLOS BLVD #G101 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G101	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G102 450 OLD SAN CARLOS BLVD #G102 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G102	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G103 450 OLD SAN CARLOS BLVD #G103 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G103	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G104 450 OLD SAN CARLOS BLVD #G104 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G104	42
HARBOUR HOUSE AT THE INN 450 OLD SAN CARLOS BLVD FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G105 450 OLD SAN CARLOS BLVD #G105 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G105	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G106 450 OLD SAN CARLOS BLVD #G106 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G106	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G107 450 OLD SAN CARLOS BLVD #G107 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G107	42
OLD SAN CARLOS INN DEVELOPMENT 416 CRESCENT ST FORT MYERS BEACH, FL 33931	24-46-23-W3-04200.G108 450 OLD SAN CARLOS BLVD #G108 FORT MYERS BEACH FL 33931	HARBOUR HOUSE AT THE INN AS DESC IN INST #2010000012068 UNIT G108	42

VARIANCE REPORT

8/13/2015

Subject Parcels: 1 Affected Parcels: 89 Buffer Distance: 500 ft



24-46-23-W3-00004.0000

THE INFORMATION CONTAINED IN THIS REPORT IS GOVERNED BY FLORIDA STATUTE 119.071 (GENERAL EXEMPTIONS FROM INSPECTION OR COPYING OF PUBLIC RECORDS).

PART VII

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Robert B. Fowler, Sr. (name), as Authorized Agent (title) Of Barrier Island Management (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

- 1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

The Fowler Company, LLC

Name of Entity (corporation, partnership, LLP, I.I.C, etc)

[Handwritten Signature]

Signature

CEO

Title

Robert B. Fowler, Sr.

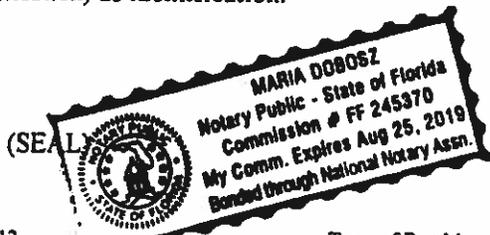
Typed or Printed Name

8-10-2015

Date

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 8-10-2015 (date) by Robert B Fowler, Sr (name of person providing oath or affirmation), who is personally known to me or who has produced _____ (type of identification) as identification.



[Handwritten Signature]

Signature

MARIA DOBOSZ

Printed Name

required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.

- If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map.
- Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 4-3. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 4-4.

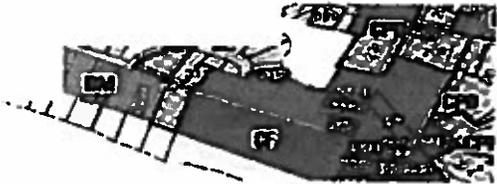
Explanatory Notes - Part V

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line.
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line.
- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which).
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information.
- F. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-A

**Additional Required Information for a
Modification to Existing Special Exception Application**

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name:	Nervous Nellies Restaurant
Authorized Applicant:	Robert B. Fowler, Sr.
LeePA STRAP Number(s):	24-46-23-W3-00004.0000

Current Property Status:
Current Zoning: Downtown Zoning District
Future Land Use Map (FLUM) Category: Pedestrian Commercial
Platted Overlay? yes <input checked="" type="checkbox"/> no FLUM Density Range: N/A

Requested Action:

<input type="checkbox"/> Use of premises in the EC (Environmentally Critical) zoning district for:
<input checked="" type="checkbox"/> Use of premises in the <u>Downtown</u> zoning district for: <u>Restaurant</u>

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a 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.

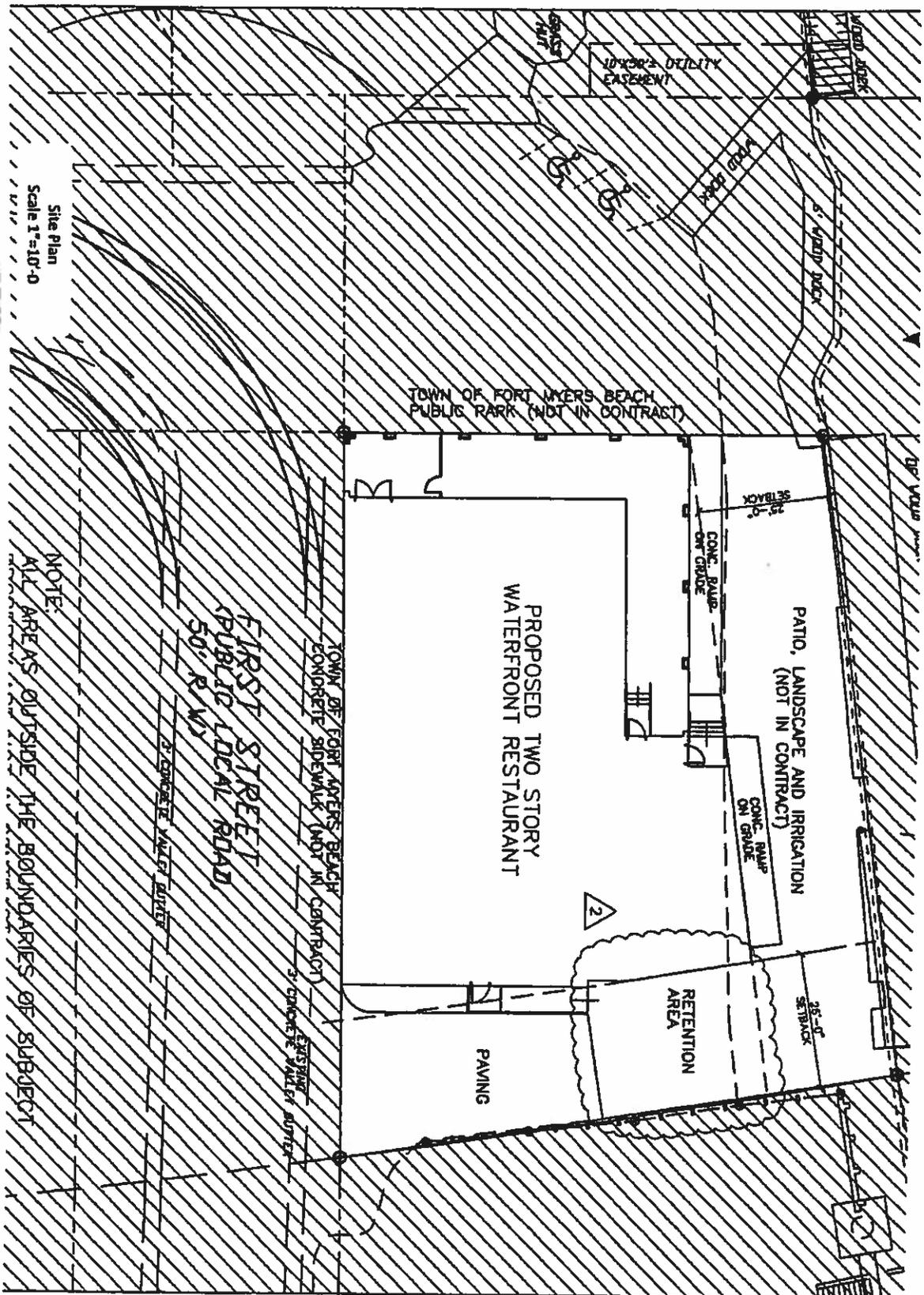
“Granting the requested special exception could impact surrounding properties as follows...”

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for special exception consist of the Public Hearing form and the supplemental form PH-A. Both parts of the application form must be completed and submitted.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.



Site Plan
Scale 1"=10'-0"

NOTE:
ALL AREAS OUTSIDE THE BOUNDARIES OF SUBJECT



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

SUPPLEMENT AA-C Consumption-on-Premises

This is the second part of a two part application. Please be sure to include the Administrative Action Application, which requires general information, with this supplemental form requiring specific information regarding a **Consumption-on-Premises** request. (Only use this form if LDC Section 34-1261 through 34-1264 clearly allows administrative approval of your request, otherwise use the Public Hearing form and Special Exception Supplement.) Please submit *two paper copies* and *one digital/electronic copy* of all required applications, supplemental information, exhibits and documents.

PROJECT NUMBER: _____ DATE: _____

Request: Indoor On-Premise Outdoor On-Premise Expansion (Ord.12-03)

Name of Establishment: Nervous Nellies Restaurant

Site Address: 1131 First St. Fort Myers Beach, FL 33931

STRAP Number (use additional sheets if necessary):

24-46-23-W3-00004.0000

Current Zoning: Downtown Zoning District Future Land Use: Pedestrian Commercial

Waterfront: No Yes If yes, provide width along waterfront: 125 _____ ft

Applicant: Nervious Nellies Restaurant Phone: 239-707-5113

Email: robsr@fowlercompany.com Fax: N/A

Type of License: 2COP 4COP SRX 4COP Other: Existing

Type of Establishment

- | | |
|--|--|
| <input type="checkbox"/> Bar/Cocktail Lounge | <input type="checkbox"/> Charter/Cruise Ship |
| <input type="checkbox"/> Golf Course Clubhouse | <input type="checkbox"/> Hotel/Motel |
| <input type="checkbox"/> Membership Club | <input type="checkbox"/> Restaurant |
| <input checked="" type="checkbox"/> Restaurant w/ Outdoor Seating (Ord. 12-03) | |

Requested Hours of Operation: As existing/approved

(Please note outdoor, on the sand COP is limited to one hour after sunset or 9pm whichever is earlier)

Required Items:

- Notarized authorization from Property Owner(s) to apply for permit
- Surrounding Area Map depicting all uses within 500 ft of the subject property
- Floor Plan of interior layout N/A
- Site Plan of entire subject property

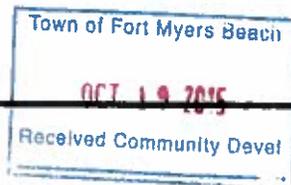
Additional Required Items (For properties effected by Ord. 12-03 only)

- Recent Survey depicting:
 - Mean High Water Line (MHWL) and/or Erosion Control Line (ECL)
 - EC Zoning District Boundary and/or 1978 Coastal Construction Control Line
 - Building/Deck/Patio Footprint(s) **See Survey**

- Site Plan depicting:
 - Area of expansion **No expansion**
 - Setbacks and dimensions per Ord. 12-03 **No Change**
 - MHWL or ECL
 - 1978 CCCL

*** See LDC Section 34-1261 through 34-1264 for rules and regulations regarding alcoholic beverage consumption-on-premises permitting. Please ensure that the requested consumption-on-premises use does not require a Special Exception before using this form.

*** Please note this application does not include approvals for any outdoor entertainment (live or pre-recorded) or special events.



RESUBMITTAL

Additions to Request for Modification to an Existing Special Exception (COP)

This response relates to an email from Matt Noble, dated October 1, 2015 requesting additional information pertaining to the Owner's of Nervous Nellies Restaurant request to permit amplified music within the limitations set forth in the Town of Ft. Myers Beach's Ordinance Amending Chapter 14, Article 2, Noise Control.

Please clarify what the application is specifically proposing to modify in the existing approval, Resolution 03-36.

This application proposes to delete the language, "is limited to non-amplified acoustical music" found in condition #3 of the approved Resolution 03-36.

Is the applicant proposing to modify approved hours that outdoor music or entertainment is performed?
No. No other modifications are requested.

Please present the proposed modifications in a strike-thru underlined format from the adopted conditions.

Resolution 03-36, Condition #3. Outdoor music or entertainment is limited to 11PM ~~and live music is limited to non-amplified acoustical music.~~ (see attached Exhibit "A")

The application has not addressed what impact the request could have on surrounding properties.
The Town of Ft. Myers Beach considered impacts to surrounding properties when it adopted its new Amended Noise Ordinance. The impact on surrounding properties related to this application will be consistent and compliant with the current Town's Amended Noise Ordinance limiting the extent to which noise may be transmitted to any surrounding properties. This application requests nothing more than what is currently permitted by Ordinance for the entire Island and will bring the applicant to a position of equity with all other property owners on the Island.

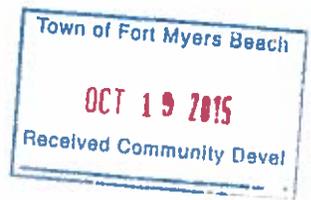
Please provide information concerning where the outdoor entertainment will be performed and the distance to the nearest residential units.

Although there is no condition within the Town's Amended Noise Ordinance related to the location of noise emission, the applicant has agreed to impose upon himself a condition that the amplified music will be placed in the southern half of the outdoor seating area furthest away from the adjacent Snug Harbor Condominium. Distance to the nearest residential units building is approximately 180 feet from the nearest point where the applicant has agreed to amplify music. (See Exhibit "B")

Is the applicant proposing any conditions to address neighborhood compatibility?

Yes. Regardless of the fact that the Town's Amended Noise Ordinance does not condition locations of noise emission, the applicant agrees to condition the location of amplified music

RESUBMITTAL



to the southern half of the outdoor seating area currently permitted for the use of music. This half of the outdoor seating is the half furthest away from the Snug Harbor Condominium.

The application provides that "It is the intent of the Owner to assist in maintaining the level of noise to Ordinance acceptable levels by moving the entertainment to a location furthest away from the nearby condominium.

Though not a condition of the Town's Amended Noise Ordinance, the applicant agrees to condition this application by moving the location of the amplified music to the southern half of the outdoor seating furthest away from the nearby condominium. (see Exhibit "B")

Please indicate this proposed location on a diagram on the site map / exhibit and include in the proposed approval conditions.

(See attached Exhibit "B")

The application does not provide a consistency analysis of the Town's Comprehensive Plan that address specific Goals, Objectives and Policies of the Plan. Please provide the required analysis.

When adopting the new Noise Ordinance, the Town Amended Chapter 14, Article 2 of the Previous Noise Ordinance. When adopting the Amendment, the Town considered and found the Amendment to be consistent with all the Goals, Objectives and Policies of the Plan. This application requests nothing contrary to the Town's Amended Ordinance, is compliant with the Town's Amended Noise Ordinance and accordingly the application is consistent with the Town's Comprehensive Plan.

Please provide a copy of Resolution 03-36 in your submittal materials so that this Resolution is part of the record of this request.

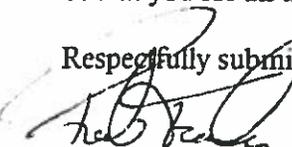
Please see copy of the Resolution 03-36 attached as Exhibit "C")

Provide a site plan consistent with the LDC sec. 34-203 requirements.

Please see attached site plan. (see Exhibit "B")

Thank you for all the attention you have given this application.

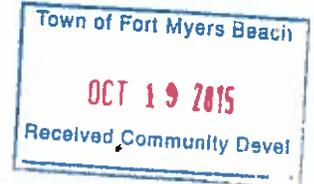
Respectfully submitted,


Rob Fowler, Sr.

Rob Fowler
EXHIBIT "A"

RESUBMITTAL

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 03- 36



WHEREAS, Snug Harbor Restaurant has requested the expansion of an existing Special Exception for outdoor seating area associated with food service and on premises consumption of alcoholic beverages located in the Downtown zoning District; and,

WHEREAS, the subject property is located at 1131 First Street, Ft. Myers Beach, and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00004.0000, and the legal description is provided in Exhibit A which is attached hereto and incorporated herein by reference; and,

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on October 14, 2002, and after giving full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons, the LPA recommended approval of the Applicant's Special exception request with the following conditions:

1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the Snug Harbor Restaurant, as approved under VAR2001-00053.
2. The total outdoor seating capacity is limited to 235 seats (an addition of 65 seats to the 170 seats approved under Resolution 02-40, Case No. COP2002-00095). The location of the outdoor seating is specified in Exhibits B, C, and D, attached hereto and incorporated herein by reference. The outdoor seating is further limited to no more than 72 seats in the 2,500 +/- sq. ft. "Courtyard" area (Exhibit B) and no more than 60 seats in the additional 650 +/- sq. Ft. "Deck Extension" area (Exhibit D) approved for outdoor seating in conjunction with on premises consumption of alcoholic beverages outdoors by this request.
3. Outdoor music or entertainment is limited to 11 PM ~~and live music is limited to non-amplified acoustical music.~~ **PROPOSED STRIKE A**
4. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11 AM and 12 AM, Monday through Thursday and between the hours of 11 AM and 1 AM, Friday and Saturday and between the hours of 12 PM and 10 PM on Sunday.
5. The service area located adjacent to the bridge structure and First Street shall be screened off by the use of an appropriate fence. Staff recommended a 6 foot white pvc fence. The FPL box will also be screened with plantings made up of silver/green buttonwoods that are at least 36 inches tall.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested special exception.

OCT 19 2015

RESUBMITTAL

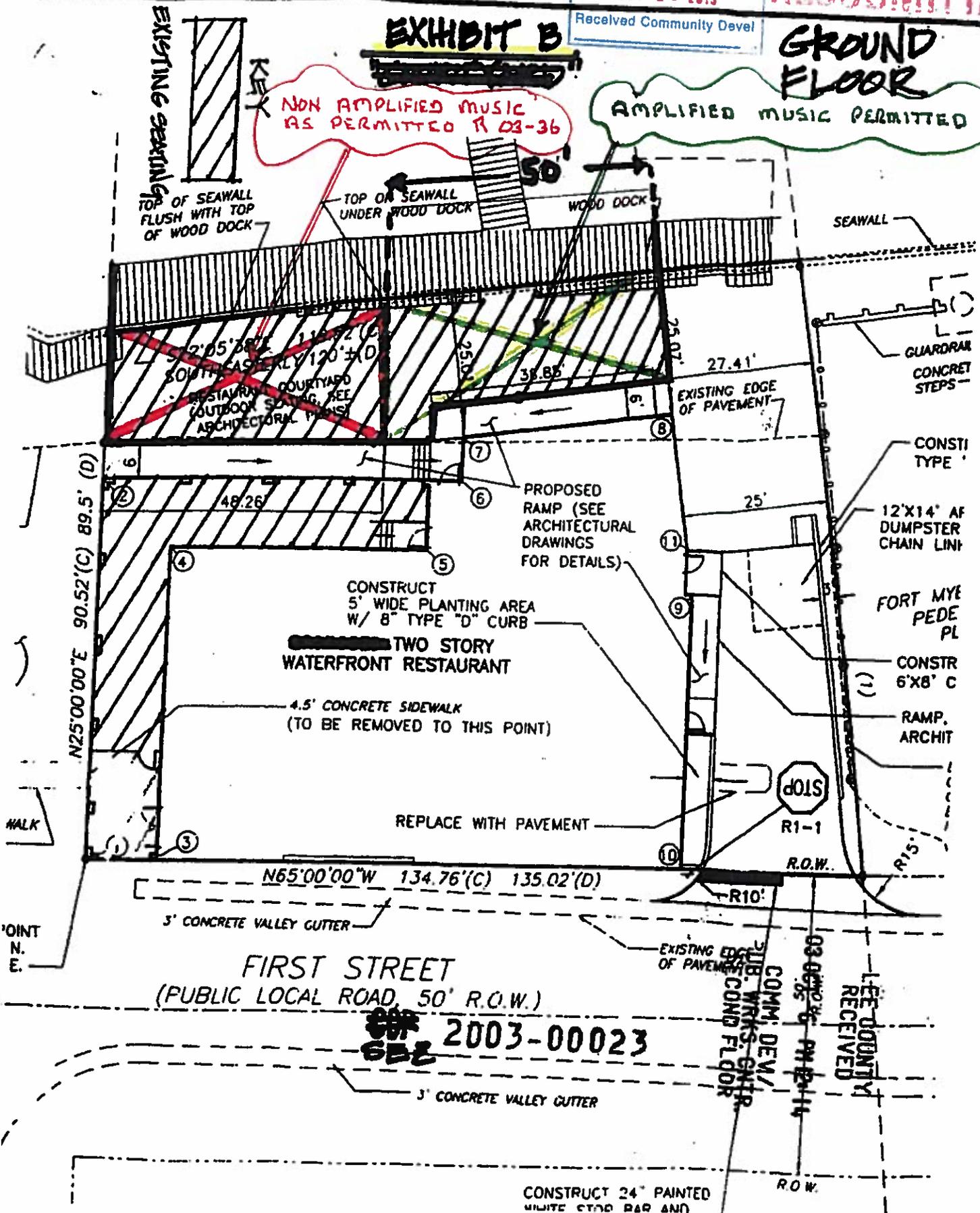
Received Community Devel

EXHIBIT B

GROUND FLOOR

NON AMPLIFIED MUSIC AS PERMITTED R 03-36

AMPLIFIED MUSIC PERMITTED



2003-00023

COMM. DEVL/
SUB WRKS. ENTR
SECOND FLOOR

LEE COUNTY
RECEIVED

CONSTRUCT 24" PAINTED
WHITE STOD BAR AND

EXHIBIT "C"



RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 03- 36

RESUBMITTAL

WHEREAS, Snug Harbor Restaurant has requested the expansion of an existing Special Exception for outdoor seating area associated with food service and on premises consumption of alcoholic beverages located in the Downtown zoning District; and,

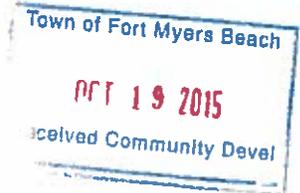
WHEREAS, the subject property is located at 1131 First Street, Ft. Myers Beach, and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00004.0000, and the legal description is provided in Exhibit A which is attached hereto and incorporated herein by reference; and,

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on October 14, 2002, and after giving full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons, the LPA recommended approval of the Applicant's Special exception request with the following conditions:

1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the Snug Harbor Restaurant, as approved under VAR2001-00053.
2. The total outdoor seating capacity is limited to 235 seats (an addition of 65 seats to the 170 seats approved under Resolution 02-40, Case No. COP2002-00095). The location of the outdoor seating is specified in Exhibits B, C, and D, attached hereto and incorporated herein by reference. The outdoor seating is further limited to no more than 72 seats in the 2,500 +/- sq. ft. "Courtyard" area (Exhibit B) and no more than 60 seats in the additional 650 +/- sq. Ft. "Deck Extension" area (Exhibit D) approved for outdoor seating in conjunction with on premises consumption of alcoholic beverages outdoors by this request.
3. Outdoor music or entertainment is limited to 11 PM and live music is limited to non-amplified acoustical music.
4. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11 AM and 12 AM, Monday through Thursday and between the hours of 11 AM and 1 AM, Friday and Saturday and between the hours of 12 PM and 10 PM on Sunday.
5. The service area located adjacent to the bridge structure and First Street shall be screened off by the use of an appropriate fence. Staff recommended a 6 foot white pvc fence. The FPL box will also be screened with plantings made up of silver/green buttonwoods that are at least 36 inches tall.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested special exception.

RESUBMITTAL



FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested modification:

1. The applicant did demonstrate compliance with the Fort Myers Beach Comprehensive Plan.
2. The applicant did demonstrate compliance with the Land Development Code of the Town of Fort Myers Beach.
3. The applicant did demonstrate compliance with the other applicable town ordinances or codes.
4. That the Special Exception, as conditioned, is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan..
5. That the Special Permit, as conditioned, meets all performance and locational standards set forth for the proposed use.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the Snug Harbor Restaurant, as approved under VAR2001-00053.
2. The total outdoor seating capacity is limited to 235 seats (an addition of 65 seats to the 170 seats approved under Resolution 02-40, Case No. COP2002-00095). The location of the outdoor seating is specified in Exhibits B, C, and D, attached hereto and incorporated herein by reference. The outdoor seating is further limited to no more than 72 seats in the 2,500 +/- sq. ft. "Courtyard" area (Exhibit B) and no more than 60 seats in the additional 650 +/- sq. Ft. "Deck Extension" area (Exhibit D) approved for outdoor seating in conjunction with on premises consumption of alcoholic beverages outdoors by this request.
3. Outdoor music or entertainment must cease no later than 11 PM in the "Deck Extension" area.
4. The service of alcoholic beverages in the outdoor seating area shall be limited to the hours of 11 AM and 12 midnight, Monday through Thursday, and between the hours of 11 AM and 1 AM, Friday and Saturday, and between the hours of 12 PM and 10 PM on Sunday.
5. The service area located adjacent to the bridge structure and First Street shall be screened off by the use of a 6 foot pvc fence. The FPL box will also be screened with plantings made up of silver/green buttonwoods that are at least 36 inches tall.

Town of Fort Myers Beach
OCT 19 2015
Received Community Devel

The foregoing resolution was adopted by the Fort Myers Beach Town Council
upon being put to a vote, the result was as follows:

RESUBMITTAL

Howard Rynearson	<u>Aye</u>
Daniel Hughes	<u>Aye</u>
Bill Thomas	<u>Aye</u>
W. H. "Bill" Van Duzer	<u>Aye</u>
Terry Cain	<u>Aye</u>

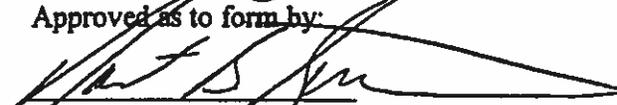
ADOPTED this 10th day of November, 2003.

ATTEST:

By:


Marsha Segal-George, Town Clerk

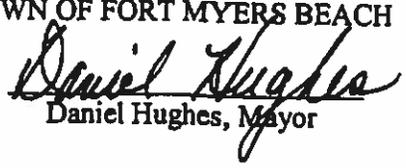
Approved as to form by:


Robert Burandt for

Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

By:


Daniel Hughes, Mayor

Town of Fort Myers Beach
OCT 19 2015
Received Community Devel

EXHIBIT "A"

RESUBMITTAL

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 46 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 PLAT 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 98.47 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 885 (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 885; 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 EDMUND 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 885.

Applicant's Legal Checked
by Amg 010CT03

SEZ 2003-00023

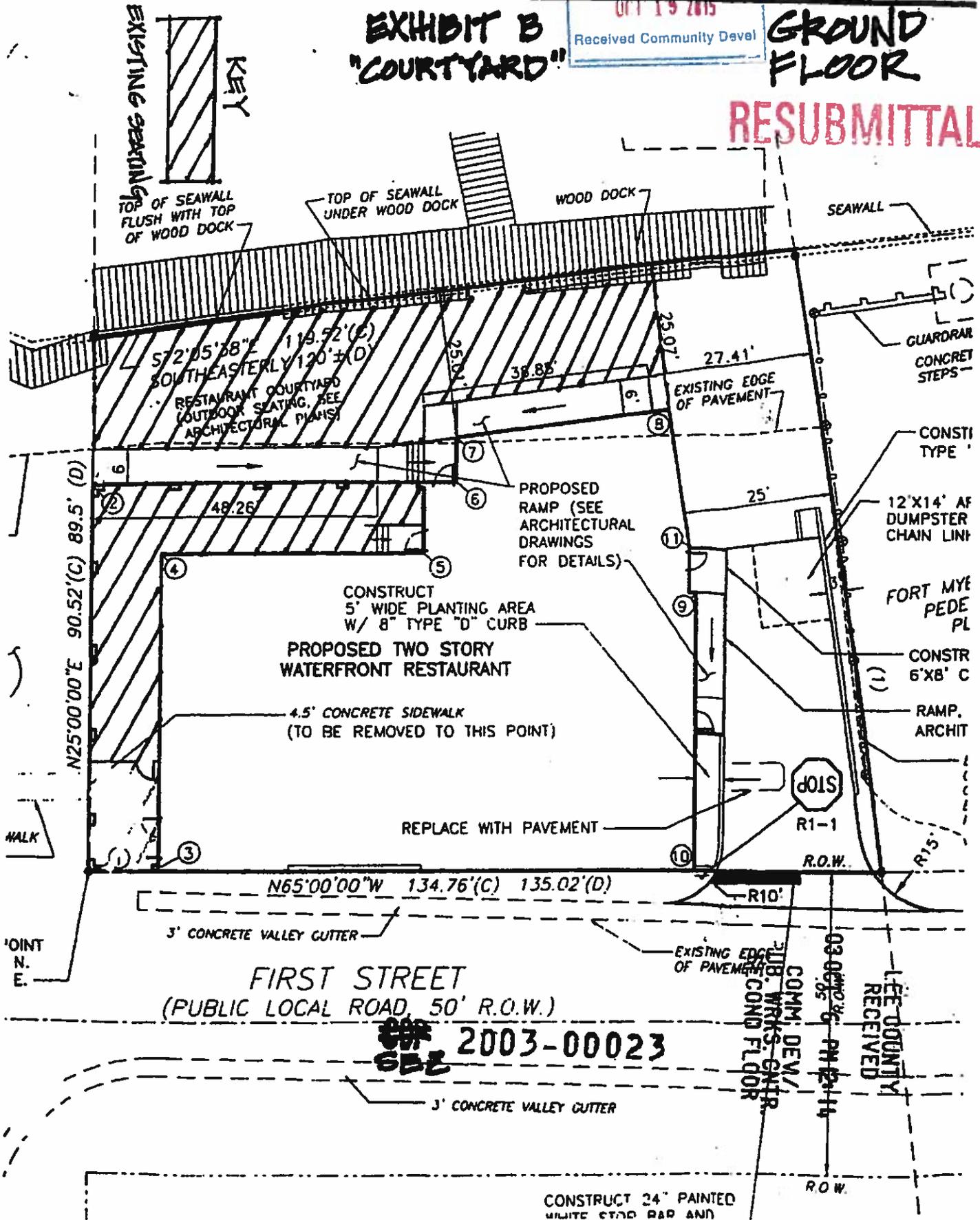
07/19/2015

Received Community Devel

EXHIBIT B "COURTYARD"

GROUND FLOOR

RESUBMITTAL



FIRST STREET
(PUBLIC LOCAL ROAD, 50' R.O.W.)

2003-00023

COMM. DEV./
PUB. WORKS. ENGR.
COND FLOOR
03-06-2015 PM 1:14
LEE COUNTY
RECEIVED

Attachment C

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 02-40

WHEREAS, Snug Harbor Restaurant has filed an application for a Special Permit in the Pedestrian Commercial district for consumption on premises (a 2COP license – beer and wine) with outdoor seating for a restaurant; and,

WHEREAS, the subject property is located at 1131 First Street, Fort Myers Beach, in S24-T46S-R23E, Lee County, Florida and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00004.0000, and the legal description is provided in Exhibit A which is attached hereto and incorporated herein by reference; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 17, 2002, when the LPA made the following recommendation:

That the Town Council approve the request subject to the following conditions:

1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the group 3 restaurant as approved under VAR2001-00053.
2. The total outdoor seating capacity is limited to a total of 170 seats. The location of the outdoor seating area is as specified in Exhibits B, C and D which are attached hereto and incorporated herein by reference. The outdoor seating is further limited to no more than 60 of the 170 seats in the "Courtyard area".
3. Outdoor music or entertainment is limited to 11 PM and live music is limited to non-amplified acoustical music.
4. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11 AM and 12 AM, Monday through Thursday and between the hours of 11 AM and 1 AM, Friday and Saturday and between the hours of 12 PM and 10 PM on Sunday.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested special permit with the following conditions:

1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating, limited to a 4-COP SRX beverage license to be used in conjunction with the group 3 restaurant as approved under VAR2001-00053.
2. The total outdoor seating capacity is limited to a total of 170 seats. The location of the outdoor seating area is as specified in Exhibits B, C and D which are attached hereto and incorporated herein by reference. The outdoor seating in the "Courtyard area" is further limited to no more than 60 of the 170 total seats.
3. Outdoor music or entertainment is limited to 11 PM and live music is limited to non-amplified acoustical music.
4. The outdoor seating will only be used in conjunction with the service of alcoholic beverages between the hours of 11 AM and 12 AM, Monday through Thursday

and between the hours of 11 AM and 1 AM, Friday and Saturday and between the hours of 12 PM and 10 PM on Sunday.

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested modification:

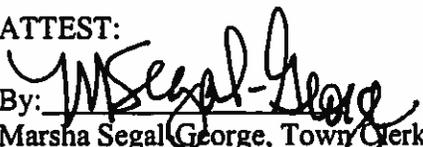
1. The applicant did comply with Section 34-1264 (2) b. which places the burden of proof upon the applicant to demonstrate that approval will not have any adverse affect on surrounding properties.
2. That there is no error or ambiguity in the Land Development Code or Town Plan which must be corrected by the Special Permit.
3. That the character and nature of the surrounding area make approval of the Special Permit, as conditioned, appropriate.
4. That the Special Permit, as conditioned, is consistent with the goals, objectives, policies and intent of the Town Plan, and the densities, intensities and general uses set forth in the Town Plan and Land Development Code.
5. That the Special Permit, as conditioned, meets all performance and locational standards set forth for the proposed use.
6. That urban services will be available and adequate to serve the proposed use when it is constructed.
7. That there are no environmentally critical areas or natural resources to be adversely affected by the Special Permit, as conditioned.

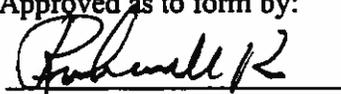
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

Howard Rynearson	<u>Aye</u>
Daniel Hughes	<u>Aye</u>
Bill Thomas	<u>Absent</u>
W. H. "Bill" Van Duzer	<u>Aye</u>
Terry Cain	<u>Aye</u>

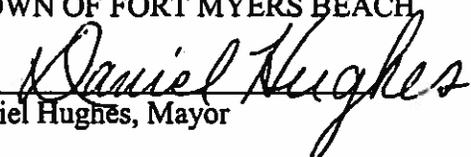
Adopted this 14th day of October, 2002.

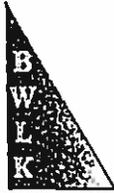
ATTEST:

By: 
Marsha Segal George, Town Clerk
Approved as to form by:


Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

By: 
Daniel Hughes, Mayor



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard, Suite 1
Fort Myers, Florida 33919-5910
email - fmo@bwlk.net
(Ph) 941-481-1331 (Fax) 941-481-1073

RECEIVED

AUG 07 2002

A Tract or Parcel of Land
Lying in
Section 24, Township 46 South, Range 23 East
Town of Fort Myers Beach, Lee County, Florida

COMMUNITY DEVELOPMENT
COP 2002-00095
~~SEZ 2002-00025~~

A tract or parcel of land lying in the State of Florida, County of Lee, Town of Fort Myers Beach, Government Lot 1 (Island) of Section 24, Township 46 South, Range 23 East, which tract or parcel is more particularly described as follows:

Starting at the southwest corner of Lot 26, Block "E" of Crescent Park Addition Subdivision, according to the map or plat thereof as recorded in Plat Book 4 at Page 46 of the Public Records of said Lee County; thence N01°43'00"W along the east line of said Section 24, said line also being the east right-of-way line of Crescent Street for 21.95 feet; thence N65°00'00"W along the northerly right-of-way line of First Street (50.00 feet wide) for 99.57 feet to the Point of Beginning of the herein described parcel, said point being on the westerly right-of-way line of new State Road 865; thence continue N65°00'00"W along said northerly right-of-way line of First Street for 134.76 feet to the intersection of said northerly right-of-way line with the easterly right-of-way line of Old San Carlos Boulevard (63.00 feet wide); thence N25°00'00"E along said Old San Carlos Boulevard right-of-way line for 90.52 feet to a point on the concrete seawall on the waters of Matanzas Pass; thence S72°05'38"E along said seawall and along said waters of Matanzas Pass for 119.52 feet to a point on the west right-of-way line of the aforesaid new State Road 865, said point being on a curve concave to the west having a radius of 2824.79 feet; thence southerly along said curve for 106.52 feet through a central angle of 02°09'38", said curve having a chord bearing of S16°16'30"W and a chord distance of 106.51 feet to the Point of Beginning.

Said parcel being that portion of the property conveyed to Edmund 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.

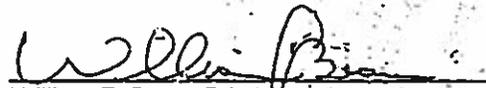
Said parcel subject to all easements, restrictions, reservations and rights-of-way.

Bearings are assumed along the easterly right-of-way line of Old San Carlos Boulevard as bearing N25°00'00"E.

Said parcel contains 0.29 acres, more or less.

The above description written to satisfy Lee County for a Development Order, however, the description as recorded in O.R. Book 1534, Page 1851 and in O.R. Book 2565, Page 800 should be used for title purposes.

Bean, Whitaker, Lutz & Kareh, Inc. (LB-4919)


William E. Bean, R.L.S. 3261

32686DESC1

5/30/02

Applicant's Legal Checked
by gm 9/9/02

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
ARMINI PARKER IS BEST SITE DESIGNER

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

EXHIBIT "A"

ASSOCIATES:

CHARLES D. KNIGHT, PSM
ELWOOD FINCHFIELD, PSM
TRACY N. BEAN, AICP
PAUL J. ENGLISH, PSM

COURTYARD

REQUESTED AREA FOR OUTDOOR SEATING (yellow hi-lite)

~~SEZ 2002-0002~~

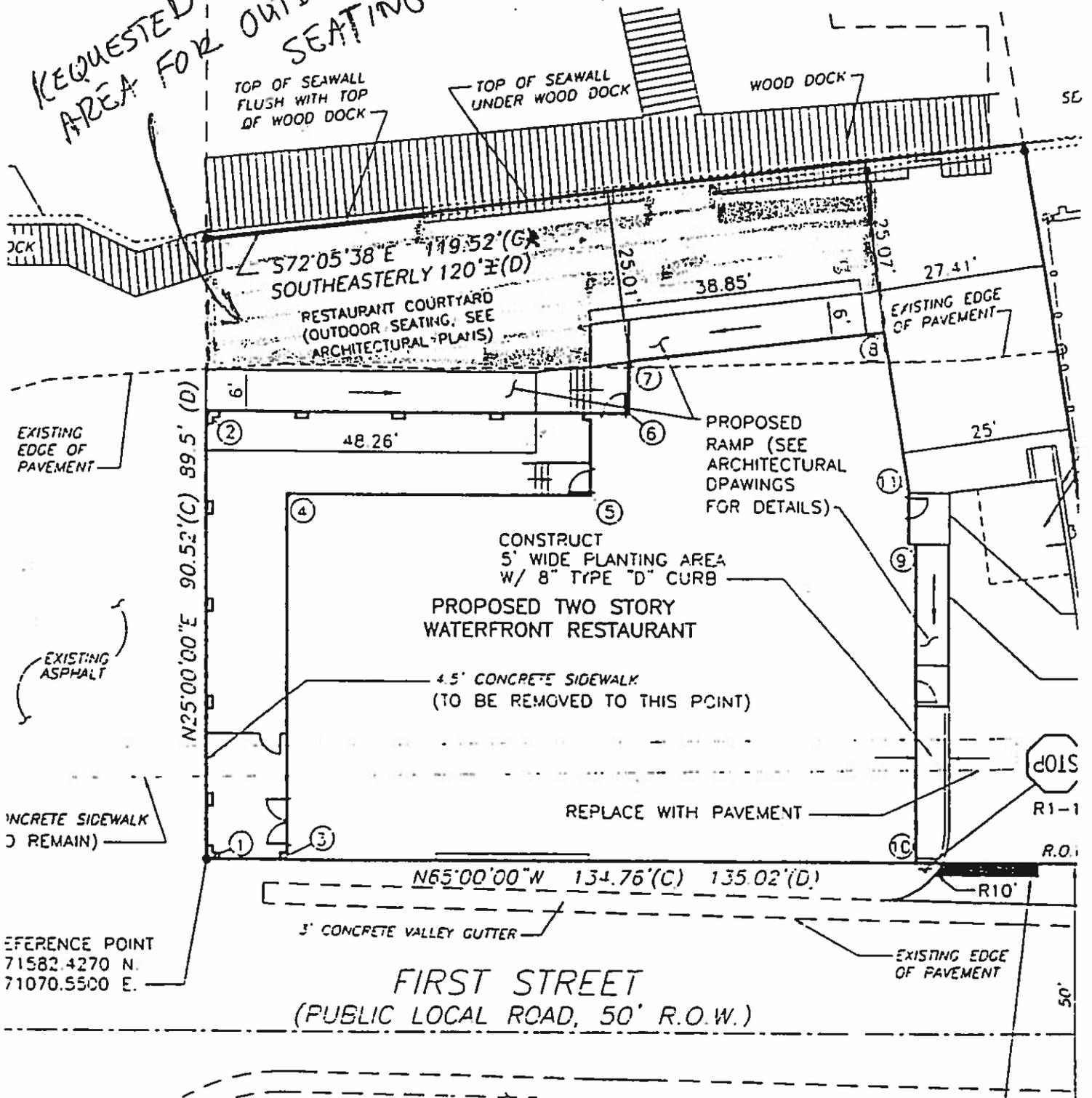


EXHIBIT "B"

1ST FLOOR

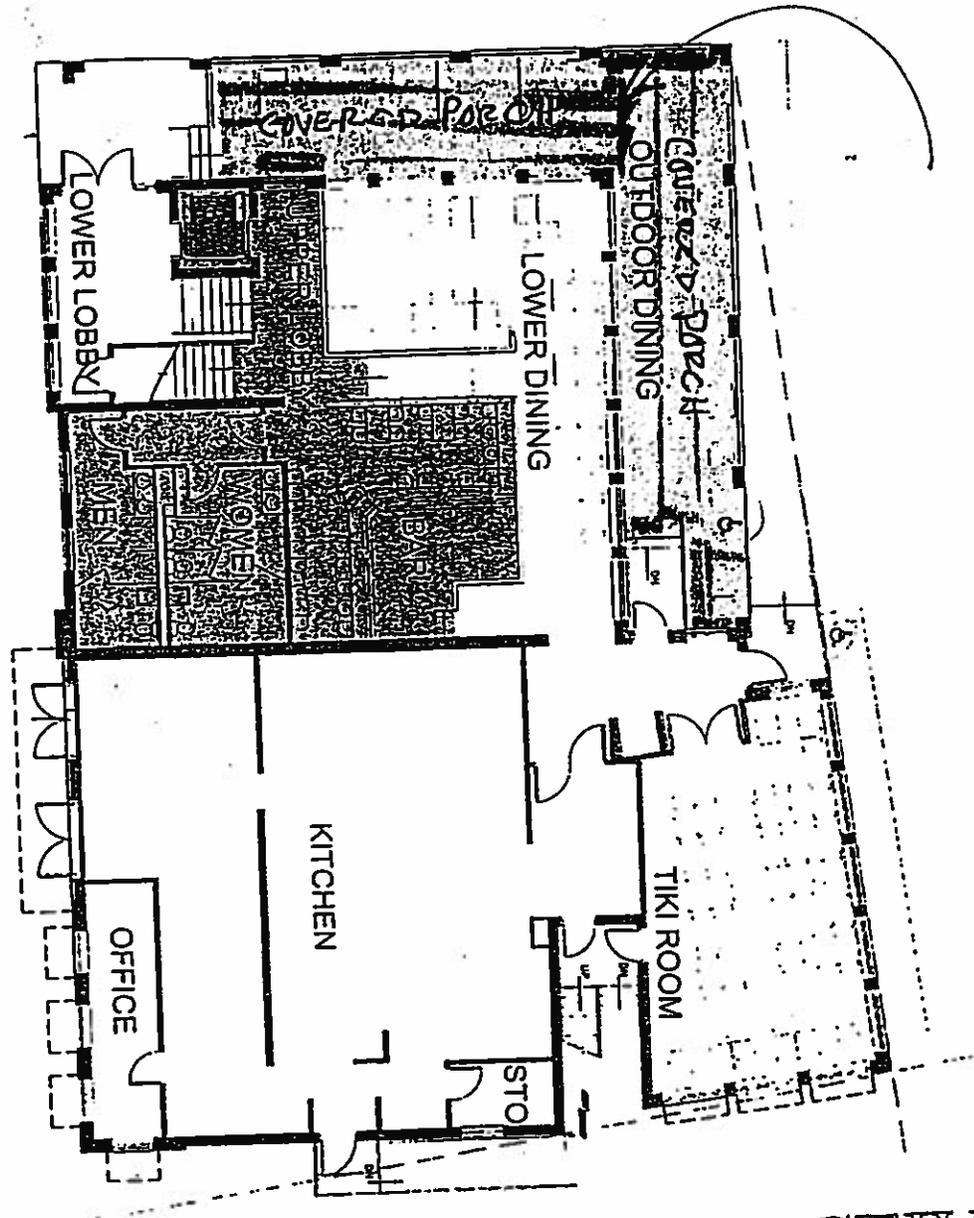


EXHIBIT "C"

RECEIVED

AUG 07 2002

SEZ ~~2002-00025~~

COMMUNITY DEVELOPMENT

COP 2002-00095

PLAN NO. A-3	PROJECT NO. GROUND FLOOR PLAN	DATE 8/7/02	DRAWN BY [Signature]	CHECKED BY [Signature]	PROJECT NO. 2002-00095	PROJECT NAME SNUG HARBOR RESTAURANT FORT MYERS BEACH, FLORIDA	<p> DONAHUE COMPANY, INC. ARCHITECTS & PLANNERS "The New Architect" </p>
		SCALE 1/8" = 1'-0"	TITLE GROUND FLOOR PLAN	CLIENT [Name]	ADDRESS 18151 322 GOLF COURSE PARKWAY, C. FORT MYERS, FLORIDA 33912	CONTACT TEL: (841) 275-2856 FAX: (841) 275-4856	

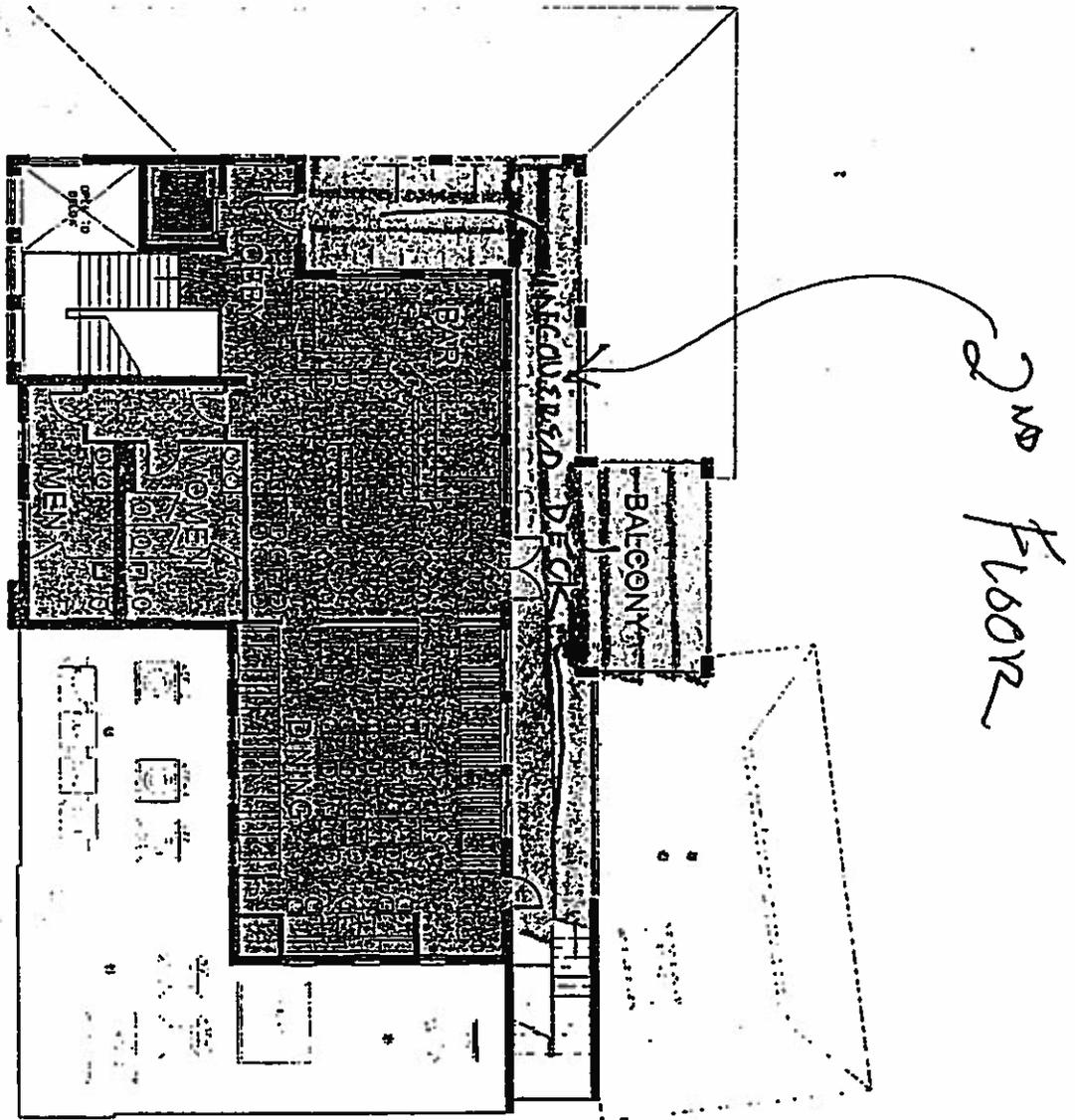


EXHIBIT "D"

A-4	SECOND FLOOR PLAN	PROJECT: SNUG HARBOR RESTAURANT		DATE: 11/11/88	SCALE: AS SHOWN	PROJECT NO.: 88-001	PROJECT NAME: SNUG HARBOR RESTAURANT	PROJECT ADDRESS: 3001 22nd Mile Cypress Parkway, C. Fort Myers, Florida 33912	PROJECT OWNER: THE FOWLER COMPANY	PROJECT ARCHITECT: DONAHUE & COMPANY, INC.
		DESIGNED BY: DONAHUE & COMPANY, INC.								



DONAHUE & COMPANY, INC.
 ARCHITECTS & INTERIORS
 3001 22nd Mile Cypress Parkway, C. Fort Myers, Florida 33912
 TEL. (941) 875-3856 FAX (941) 875-4856

"The New Architect"

OLD SAN CARLOS BOULEVARD – CRESCENT STREET
MASTER PLAN

Town of Fort Myers Beach, Florida

February, 1999

Objectives of this Study Page 1
Previous Planning Efforts in This Area Page 1
Planning Process for this Study Page 2
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 New "Bayfront Square" Page 9
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Appendix B — Participants in 11/7/98 Workshop
Appendix C — Breakdown of Preliminary Cost Estimate
Appendix D — Parking Computations

Prepared by:

Dover, Kohl & Partners
5879 Sunset Drive, Suite 1
South Miami, Florida 33143

Spikowski Planning Associates
1617 Hendry Street, Suite 416
Fort Myers, Florida 33901

Chael, Cooper & Associates, P.A.
5879 Sunset Drive, Suite 1
South Miami, Florida 33143

Objectives of this Study

This design study was commissioned by the Town of Fort Myers Beach to begin implementing its new comprehensive plan in the downtown area near Times Square. The new comprehensive plan is organized around a “community design” theme that calls for specific physical improvements to the town, including buildings, streets, and other public places. Together, these pieces can create a coherent whole that reinforces the small-town character of Fort Myers Beach while continuing its comfortable coexistence with tourism.

The new comprehensive plan promotes the revitalization of the downtown core area, centered around Old San Carlos Boulevard and Crescent Street, as the nucleus of commercial and tourist activities. The plan calls for the concepts formulated by the Estero Island Community Redevelopment Agency (CRA) to be refined and extended, including:

- 1. Expand the Times Square pedestrian-friendly zone along Old San Carlos Boulevard from Times Square to Matanzas Pass, connecting the beach to the bay.**
 - ▶ Promote infill commercial activity to improve economic opportunities and create a sense of place without further interfering with traffic flow on busy Estero Boulevard.
 - ▶ Improve the street’s appearance by providing comfortable sidewalks, burying utility lines, and adding landscaping.
 - ▶ Improve public access to the bay at the north end of Old San Carlos Boulevard.

- 2. Improve the existing parking situation.**
 - ▶ Provide additional parking to offset current shortages and to meet the needs of redevelopment.
 - ▶ Suggest management strategies to make the best use of the parking supply, consistent with other community goals.
 - ▶ Propose a long-term parking strategy, including appropriate design parameters for any future parking garages.

- 3. Consider the future of Crescent Street and First, Second, Third, Fourth, and Fifth Streets.**

- 4. Propose specific strategies that the town can use to implement its redevelopment plans.**

Previous Planning Efforts in This Area

Extensive planning for the downtown core area around Times Square began in the late 1980s. As a result, Lee County undertook a multi-million dollar improvement to the area’s local streets around 1992, paving and widening streets, improving the drainage system, and adding some sidewalks.

The Estero Island CRA was established in 1991. In addition to its planning for other parts of the island, the CRA produced a “Core Area Master Plan” in 1995. Parts of this master plan have already been implemented: Times Square was converted to a pedestrian mall in 1996-97; wide

decorative sidewalks and street trees were extended from Times Square to the Lani Kai at the same time; and new development regulations for the core area were adopted in 1996.

Shortly after incorporation on December 31, 1995, the town began work on its island-wide comprehensive plan. The completed plan, which became effective on January 1, 1999, sets forth policies for the town to follow in its official actions and for the private sector to follow when redeveloping land. The comprehensive plan contains specific guidance for the downtown area in the following policies:

- Basic downtown redevelopment concept: *Policies 2-B-1, 2-B-2, 3-D-2, 3-D-4, 3-D-6, 3-D-9, 7-E-3*
- Burying overhead utility lines: *Policy 1-B-5*
- Landscaping along streets: *Policies 1-B-2, 1-B-3*
- Sidewalks: *Policies 3-D-3, 7-E-4(ii)*
- Plaza on Matanzas Pass: *Policy 3-D-4(v)*
- Parking improvements: *Policies 3-D-5, 7-A-2, 7-F-1, 7-F-2, 7-F-3, 7-F-4*
- Pedestrian crossings on Estero Boulevard: *Policies 1-A-1, 4-A-4, 7-B-3, 7-E-4(iii)*

The town also adopted a Downtown Redevelopment Plan and established a Downtown Redevelopment Agency (DRA) in 1998 to help finance and carry out these improvements.

Planning Process for this Study

This study began with a well-attended “Designing Our Downtown” workshop on November 7, 1998. This session was advertised in the local newspapers, and flyers were mailed to all area businesses and property owners and distributed throughout Fort Myers Beach. Participants are listed in Appendix B.

Victor Dover of Dover, Kohl & Partners opened the workshop with a slide presentation entitled “Creating Memorable Places.” Those attending were then divided into four working groups. Each group was provided with a large map of the entire downtown core area showing buildings, property lines, and streets. The groups worked together for 2½ hours, discussing and sketching ideas on how to improve the downtown area.

After lunch, a spokesperson from each group presented the major ideas their group had generated. The following list includes the major ideas from all of the groups; the first seven items reconfirmed previous planning ideas, and the last three were received after the workshop:

1. Storefronts on Old San Carlos should be closely spaced and dry-floodproofed at ground level, with wide sidewalks, street trees, and on-street parking
2. Parking behind buildings (at-grade if possible); private parking garage if needed
3. Public plaza along Matanzas Pass; incorporate water taxi landing
4. Parking garage could be built near gambling boats or at foot of bridge
5. Reduction (not necessarily elimination) of parking in Lynn Hall Park, addition of sand volleyball and/or an amphitheater.
6. Bike paths on Crescent from Estero to the bay and back along Old San Carlos
7. Place all utilities underground
8. Second and Third Streets — retain current one-way configuration, but add angle parking on one side?

9. Parking needed for the gambling boats could be accommodated in surface lots at the marina or, if included in a three- to four-story parking garage (between Third Street and Snug Harbor); it would allow a more natural development of park along Matanzas Pass
10. The Helmerich Plaza site is underutilized and a blighting influence on Crescent. Three redevelopment concepts were offered, each with two-story buildings fronting directly on sidewalks:
 - a. Add an L-shaped mixed-use, urban building at Estero and Crescent, including the area over the existing drive-through lane
 - b. Move all buildings to the perimeter of the block and add large awnings to protect pedestrians
 - c. Convert the area north of the east-west driveway to a public use, with commercial uses to the south reconfigured to face the exterior sidewalks
 - d. An interior parking lot or garage with landscaped courtyard
11. Several additional ideas for a public plaza at the Matanzas Pass end of Old San Carlos:
 - a. Reclaim the existing public right-of-way of Old San Carlos down to the water by relocating Snug Harbor parking and creating a pier similar to Mallory Pier in Key West
 - b. Acquire the privately owned land between Old San Carlos and the Sky Bridge, remove the freezers and sheds, move existing parking to nearby shared lots or garage, replace dumpsters with trash compactor at off-site location to serve entire core area, add amphitheater, farmers market, water taxi, and mini-rail transit landing stations
12. Add traffic-calming devices such as raised crosswalks, street trees, and narrower drive lanes on Old San Carlos and Crescent
13. Crescent Street ideas:
 - a. Add 12-foot sidewalk on east side
 - b. Preserve historic houses
 - c. Maintain canal frontage as strictly residential, but – in future – allow small retail uses on ground floor facing sidewalk and residential on the top floors
14. Old San Carlos Boulevard ideas:
 - a. All buildings built to the sidewalk, two- and three-story buildings required to build street space, all buildings should have pedestrian cover (arcades, colonnades, or awnings)
 - b. On-street parking and shared parking on rear of lots or garages
 - c. Street trees, lights, benches and 12-foot sidewalks on both sides of street
 - d. Raised crosswalks to define pedestrian area and slow traffic
 - e. Central location for a compactor with enclosure to reduce odors
 - f. Place street trees in bump-outs between each two parallel parking spaces
15. Trolley or tram to use clean fuel (propane or electric); its path would be from Matanzas Pass under the Sky Bridge to Bowditch Point to Santini Plaza and back to Matanzas Pass with stops on demand, with no charge for service
16. Hang tags for visitors' cars that would allow parking anywhere
17. Palm trees as street trees on both Old San Carlos and Crescent Street
18. Free bikes for the use of everyone
19. Some minimal area should be left open for storm surge on Old San Carlos
20. There should be an entrance feature at the bottom of the Sky Bridge
21. Recycling containers would help keep the area clean and provide revenue

22. Town should buy building at base of bridge and replace with plaza/fountain
23. Create a museum/visitor center
24. Develop a generalized request for proposals for a “downtown” parking garage; this would allow developers to propose different sites for a garage
25. Create a parking authority to provide consistency and uniformity in parking
26. Create a design review committee for architectural plans

After the public workshop, the consulting team performed technical analyses on many of the alternatives that had been discussed. Examples of later analyses include:

- ▶ Diagonal vs. parallel parking: For on-street parking, spaces entered diagonally are more efficient and easier to enter than parallel-parking spaces. However, a wider right-of-way is needed. Both alternatives were considered for Old San Carlos Boulevard, where the right-of-way is now 63 to 66 feet wide. The diagonal alternative would allow 24 additional spaces, but would require acquisition of additional right-of-way. The difficulty and expense of land acquisition was not deemed to be warranted given the other opportunities for increasing the parking supply.
- ▶ Pedestrian crossing on Estero Boulevard: The Town of Fort Myers Beach is considering a pedestrian overpass at Times Square to reduce the travel delay now caused by the button-actuated traffic signal. Other alternatives to serve this purpose were analyzed (see discussion further below).
- ▶ Alternative locations for parking garages: The advisability of a parking garage near Times Square has long been discussed. Various feasible locations for a parking garage were identified and analyzed, especially: the minimum land size needed, the travel patterns that would result, and the aesthetic impacts of a parking garage. Three feasible locations have been identified and are presented in this report.
- ▶ Parking garages vs. on-street parking: Parking garages are expensive and cannot be built incrementally, yet parking demand increases incrementally during the redevelopment process. An ideal parking strategy may eventually include a parking garage but would be achievable in small steps, either by government or private sector activity. This general concept has been carried out in the recommendations that follow.

Preliminary ideas were presented by the consulting team to a joint meeting of the Town Council and the Local Planning Agency (LPA) on January 7, 1999. Early drafts of two site plans were presented. One showed moderate infill development, at levels that can be supported with surface parking. The other showed more intense infill development, which would require one or more multi-level parking garages. Two perspective sketches were displayed, one showing a street-level view of Old San Carlos Boulevard and the other with a view of First Street and Old San Carlos from the top of the Sky Bridge.

The presentation to the joint meeting showed the “moderate infill” concept possibly evolving into the “more intense infill” pattern over time. The more intense plan depicts what happens when one or more of the large surface parking lots are redeveloped into parking garages and more new buildings are built to take advantage of the increased parking supply.

The initial concept for Estero Boulevard near Times Square was also presented, showing the medians widened, lengthened, and landscaped. These medians would then serve as pedestrian

refuges, allowing pedestrians to cross Estero Boulevard in two stages, rather than waiting for traffic to clear both directions or stopping traffic in both directions by using the traffic signal. Under this plan, no pedestrian overpass would be needed, and the existing traffic signal would remain only as a flashing caution light.

Town Council and LPA members asked questions and made comments on the ideas presented. At the conclusion of this session, public comments were also received. The consensus was to proceed with greatest attention to the moderate infill plan (with surface parking only). The consulting team then went forward with refinements to the plans and with preparation of this report, which contain the final recommendations, plan drawings, and completed perspective sketches. These ideas were presented to another joint meeting of the Town Council and LPA on February 25, 1999.

A View into Downtown's Future

From the earliest days, historic San Carlos Boulevard was one of the island's primary public spaces. The palm-lined Main Street created one's first and last visual impressions of Fort Myers Beach as visitors and residents arrived and departed via the old swing bridge.



Figure 1, "Avenue of Palms" [photo courtesy of Estero Island Historic Society]

During the next generation, Old San Carlos Boulevard and Crescent Street should be encouraged to mature, to once again play a part in setting the character and positive image of the town core. The neighborhood framed by these streets should be organized and redeveloped around a series of *high-quality public spaces*, including the street spaces themselves, to create an environment which promotes walking and neighborliness. The most important design idea in this plan is to focus on the *public realm between buildings*. The streets must evolve to be more than mere roads, but to be multi-purpose, people-oriented, inviting places.

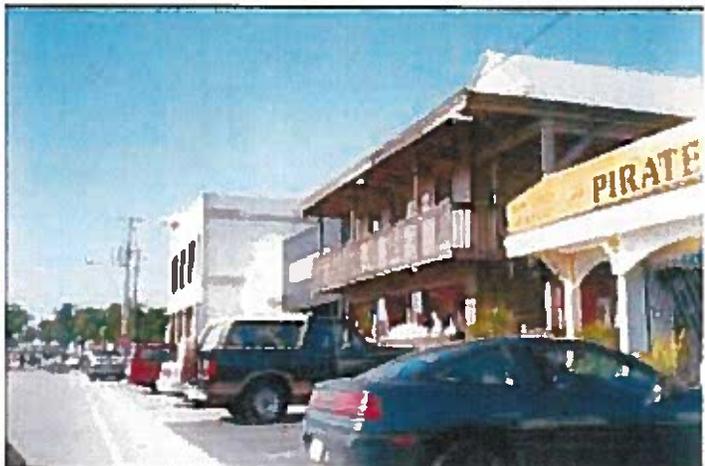
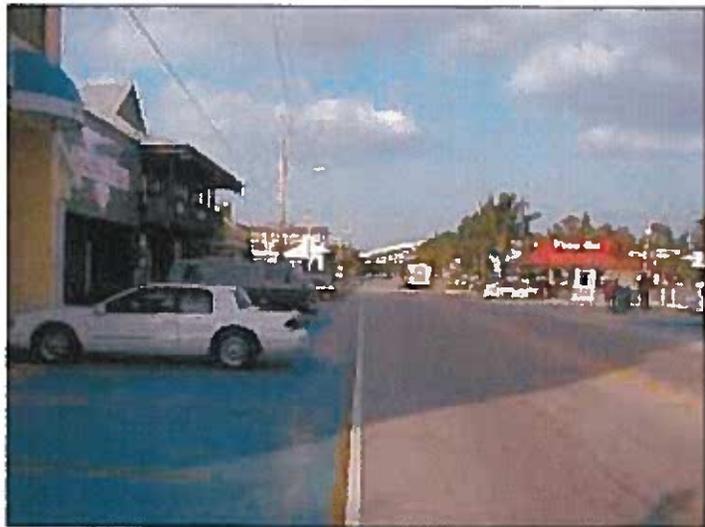
Correcting the physical form of this public realm is key to motivating private investors to reinvest wisely in the properties in this important area. Changes will occur gradually over time, and if directed by good business sense, planning, and design, will transform the area into a vibrant, distinct part of the town. *Imagine Old San Carlos and Crescent a generation from now:*

The Future of Old San Carlos Boulevard



Figure 2

The street makes a strong spatial connection between the Bay and the Gulf. Private reinvestment has led to the infill of new buildings, with their eclectic storefronts positioned along the wide, shaded sidewalks. Apartments, hotel rooms, and even some offices occupy the upper floors above the shops and restaurants. On-street parking, curbs, and travel lanes are coordinated in a scene that provides for but is not overshadowed by the automobile. The intersecting streets allow easy turns to parking behind the buildings. Courtyards and pedestrian passages lead to special discoveries within the block, including a water taxi stop on the Third Street canal. With a character all its own, Old San Carlos has become the quieter, more intimate alternative to busy Estero Boulevard.

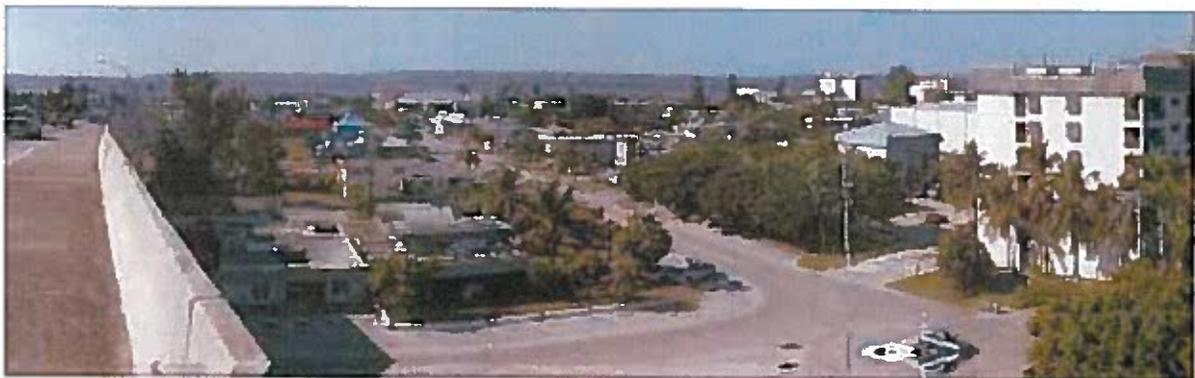


New “Bayfront Square”



Figure 3

Where Old San Carlos Boulevard reaches Matanzas Bay on the north end, it leads to a new public park fashioned from the former parking lots and lost space. This is the town’s front door to the Bay, and is used for everything from public gatherings and festivals to casual lunch with friends. New and renovated buildings frame the square. While the park itself is a simple, modest green space and plaza, the scene is completed by the overlooking balconies, porches, and arcades. Outdoor dining is encouraged in this area. The working waterfront is celebrated and showcased here; the boats and fishing are part of the romance of Fort Myers Beach. The new hotel and the square are the first things one notices when arriving via the updated Sky Bridge. Bayfront Square has become a destination that gives pedestrians a new reason to walk down Old San Carlos Boulevard from the beach to the bay.



The Future of Crescent Street



Figure 4

Crescent Street now forms a second link between Bayfront Square and bustling Estero Boulevard. Sidewalk improvements have made Crescent part of a popular walking path around and under the bridge. While not as prominent as Times Square or Old San Carlos, Crescent has settled into a very natural mix of uses, combining modest commercial enterprises, lodging, and in-town residences. Several vacant or underutilized lots have been developed or redeveloped. Notably, the former Helmerich Plaza strip shopping center has been reconfigured as a street-oriented, charming part of the town core. The redevelopment features a mid-block parking lot with a “liner” of normal mixed-use buildings around it, providing windows, doors, and balconies overlooking the street. The parking lot is large enough to be converted to a parking garage that would be screened from view on all sides by the “liner buildings.” An intimate park has been created midway on Crescent Street, furnishing a unique neighborhood identity.

The Composite Plan

Figure 5 identifies the existing conditions in the Old San Carlos / Crescent area in January 1999.

Figure 6 shows the recommended composite plan for the same area, with moderate infill development served entirely by surface parking lots.

Figure 7 shows a more intense infill plan, which would require one or more parking garages at the locations shown.

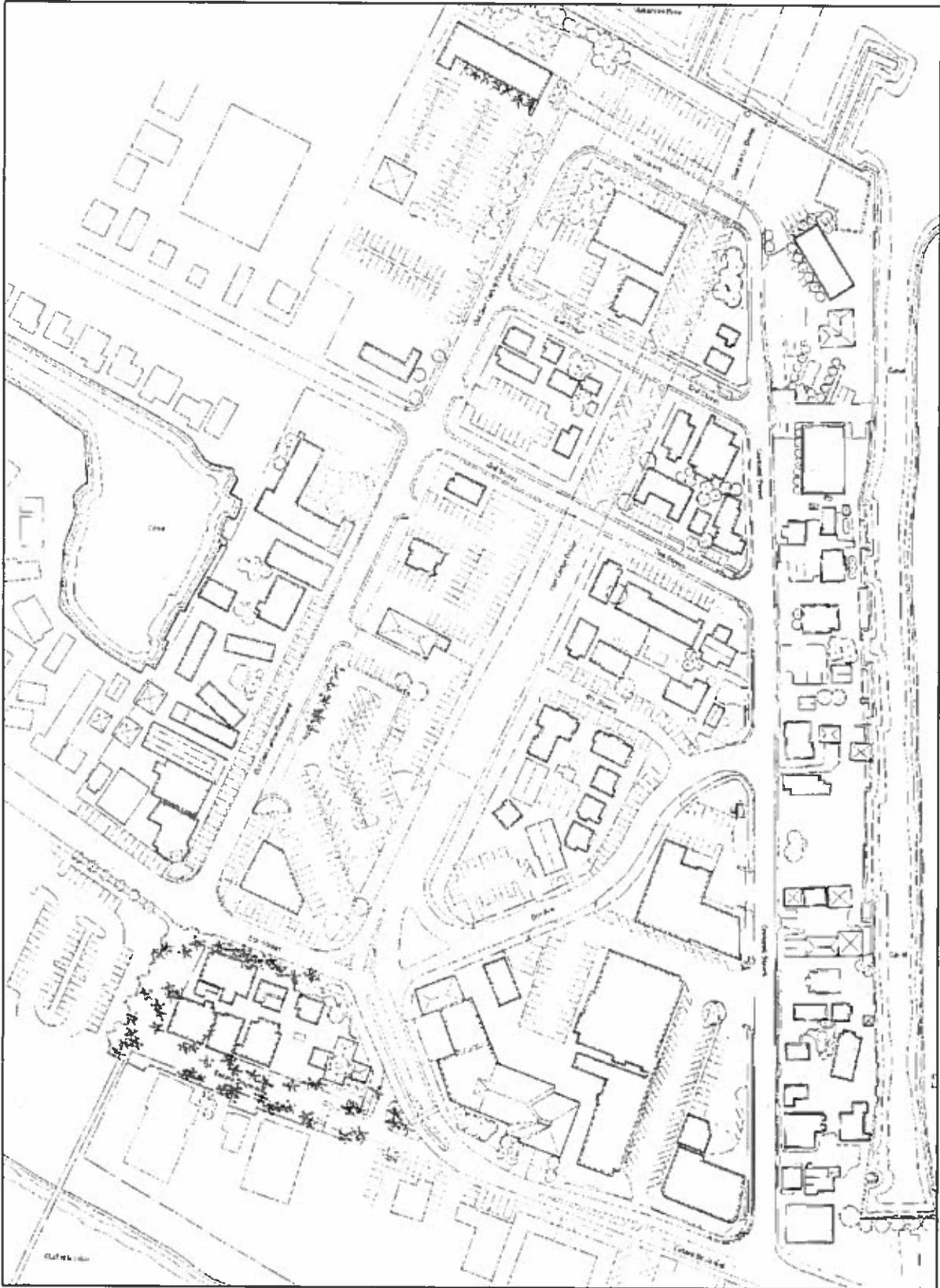


Figure 5, showing existing conditions (January 1999)

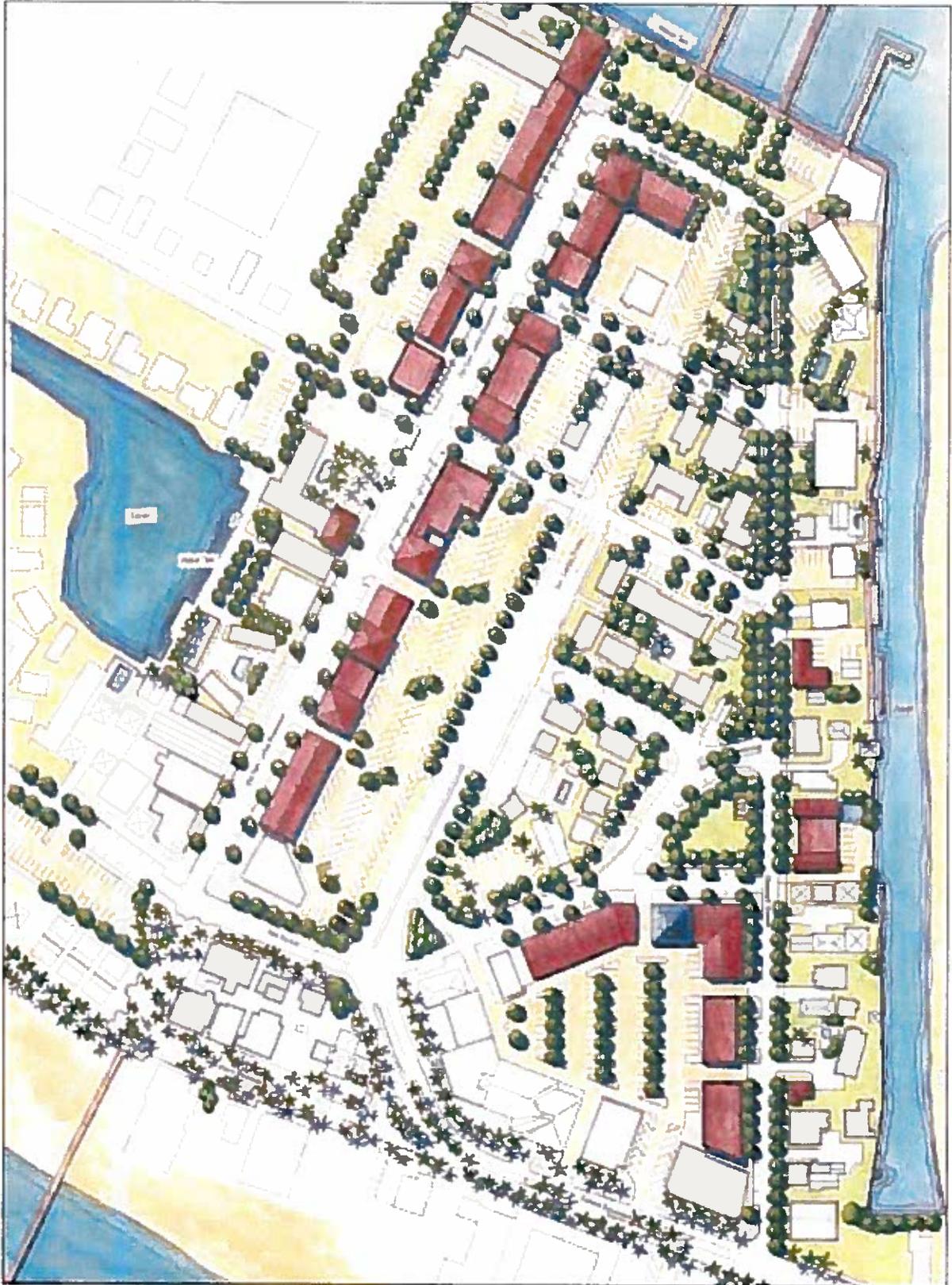


Figure 6, showing moderate infill plan with surface parking

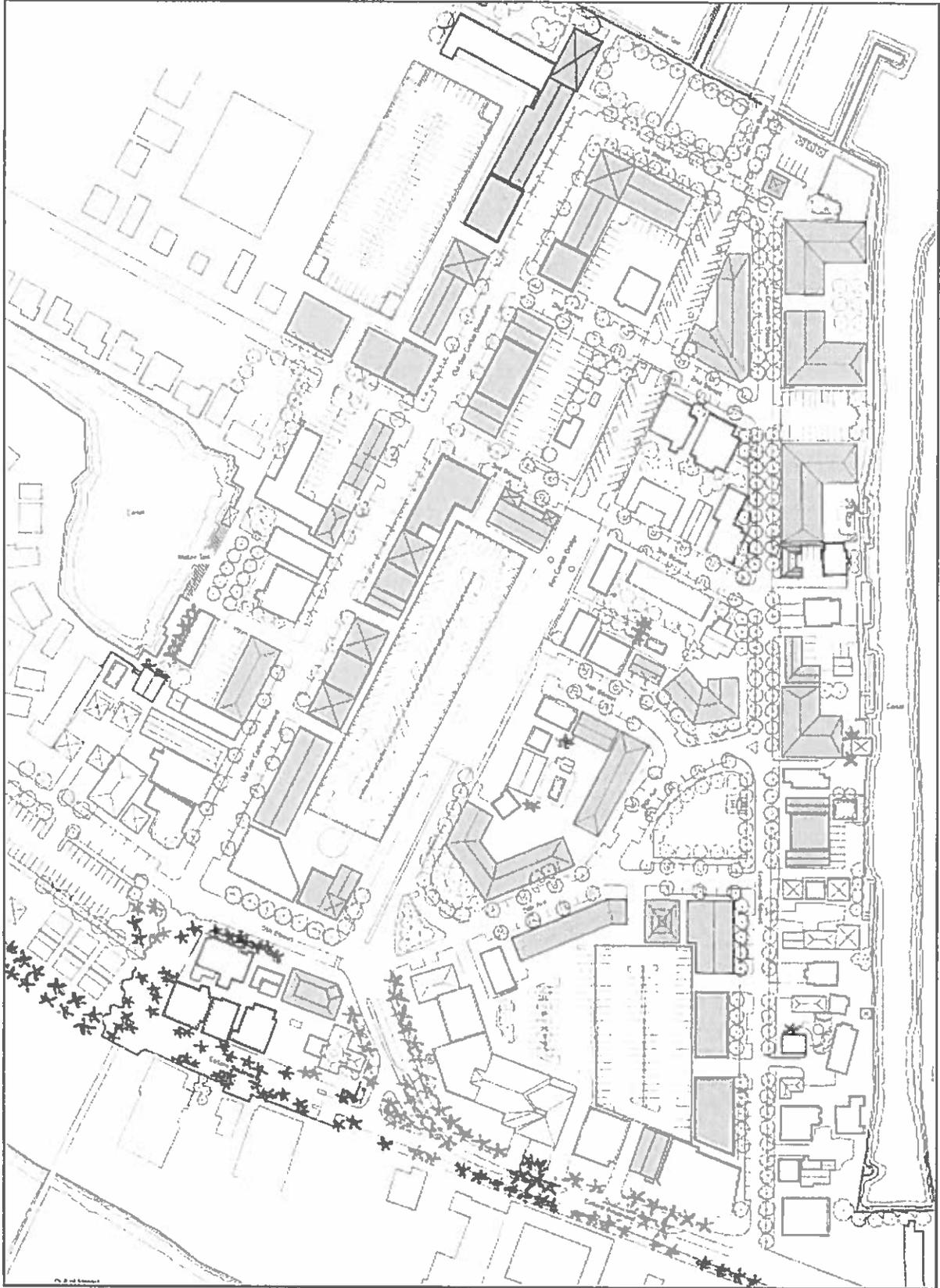


Figure 7, showing more intense infill plan with parking garage(s)

Specific Recommendations

Parking

At present, the downtown area has all the basics of a great pedestrian place: it is compact, attractive, economically vibrant, and has places worth walking to — all this, plus a great beach. Not surprisingly, its current popularity often surpasses its perceived ability to handle visitors. Local residents and tourists staying in island motels or condominiums often walk or bicycle around the island, but other Lee County residents and visitors staying off the island usually come in cars, clogging some key roads every winter.

There are several distinguishing characteristics of the downtown area that may help with the parking problem. The city blocks are small, with many streets having ample rights-of-way (other than Crescent Street, all are at least 50 feet wide). A great deal of public land is being used for private parking lots. Land parcels are small but expensive, making it difficult to provide on-site parking at all, let alone at the rate required for conventional development regulations.

A rudimentary public transit system is in place. A better transit system would make visitors more comfortable with parking their cars once without sacrificing mobility around the town.

Extremely valuable land is already being devoted to parking. For example, most of Lynn Hall Park adjoining the pier and Times Square, and potentially valuable land on Old San Carlos Boulevard and Matanzas Pass, are used as parking lots. Despite these parking lots and other public parking spaces underneath the Sky Bridge, parking conflicts are often felt. Many people park illegally in business lots which are designed for customers only; frequent towing is the unpleasant result. Pedestrians often have to walk through a maze of parked cars to get to the beach or while window-shopping; the west side of Old San Carlos is a prime example. Parking spaces that appear to be on public land are often marked as tow-away zones by individual merchants. Knowledgeable local residents may ignore these signs, but visitors continue to drive around, looking for a space where their cars won't be towed away.

Most visitors expect to pay for parking when visiting popular beaches, and are especially willing to do so when parking lots are safe and convenient. The Town of Fort Myers Beach does not need to purchase expensive land to provide parking; it already owns considerable rights-of-way. On-street parking is well-dispersed to serve beach visitors and local businesses, and it can be designed so that parked cars provide a barrier between moving traffic and sidewalks, making the walk from a parked car to the beach all the more pleasant.

Private landowners can also redevelop prime land with valuable storefronts up to the sidewalks and then provide additional parking in the less-valuable rear of their lots. If these rear lots are interconnected, much less land is wasted on parking aisles, and the total number of spaces is lowered since visitors need not move their car to each of their destinations. This redevelopment approach maximizes the value of private property while adding parking spaces, thus helping solve parking problems that harm Fort Myers Beach's reputation among visitors and which block healthy redevelopment efforts.

The recommended parking strategy for Fort Myers Beach, from the visitors' point-of-view, can best be described as "Park-Once." Those who must drive to Fort Myers Beach should park in a safe central location and enjoy their visit on foot or use the trolleys. This "Park-Once" pattern

can be seen in mature towns and in healthy historic communities all around the globe, especially in favorite vacations spots.

It is impractical, and undesirable, for the downtown area to meet 1960s-style “park-at-each-destination” expectations. If each destination is required to provide enough parking spaces for its maximum number of customers, the resulting parking lots would be so large that walking between destinations would be unpleasant, if not impossible. Fort Myers Beach needs a stronger *sense of place* to continue thriving, and this cannot be achieved with an urban pattern that has a few buildings set far apart in giant parking lots. Despite modern codes and a national obsession with automobiles, vacationers continue flock to places that can be enjoyed without driving from place to place.

To achieve the “Park-Once” strategy, parking providers and users must think in terms of “shared parking” rather than exclusive-use parking. These shared parking lots must be conveniently located, easily identifiable, safe, and connected to popular destinations in such a way that the walk is part of the attraction, not a hurdle to be overcome.

This last point means that the streets must be improved in order to make attractive the parking spaces that are farther from one’s destination. Today, some of the outlying spaces are underutilized except on the busiest days. Improvements that promote walking include wider, shaded sidewalks and interesting storefronts along the way. Efficient parking, redevelopment, and public street improvements go hand in hand. The street improvements are needed to unlock the potential of the entire surface parking supply.

Shared parking is completely compatible with efforts to improve the pedestrian environment. It also reduces unneeded traffic congestion and keeps landowners from wasting too much land on parking lots. However, it makes little sense to provide parking for more cars than the road network can handle; the extra spaces would remain unused, while motorists who previously avoided driving to Fort Myers Beach now add to the lines of cars that form during peak periods.

Shared parking is a concept that can take many different physical forms:

- ▶ On-street parking, usually metered, located on public land;
- ▶ Businesses offering parking spaces to the public for a fee (but not restricted to customers of a particular business); these spaces can be in surface lots or in a parking garage;
- ▶ Parking lots operated jointly by merchants for their customers (and perhaps to others for a fee);
- ▶ Public or privately owned parking lots on the mainland, connected by convenient transit, offered at fees below the cost of a parking space; and
- ▶ Various hybrids of the above, such as parking spaces partly on public and partly on private land, with the resulting parking spaces apportioned fairly (this approach may be suitable for Fourth Avenue between Crescent Street and the Sky Bridge).

The Town of Fort Myers Beach should endorse the use of shared parking as its primary parking strategy throughout the downtown area. Like all other parking lots, there are costs to develop shared parking lots, but the land-use impacts will be very positive and substantial revenue can be generated. The town’s new Land Development Code should be closely tied to this effort, providing incentives and regulations that will ensure a coordinated effort. In a few cases,

businesses have privatized public land for their own parking, but the town's efforts in expanding the total parking supply will offset the loss of private use of these spaces.

The recommended parking strategy has four major points:

1. On-street parallel parking spaces should be constructed by the Town of Fort Myers Beach as shown on Figure 6. This would create 226 on-street parking spaces (74 spaces on Old San Carlos alone). However, some existing "privatized" spaces — those that are on public land but which have been marked by private landowners for private use — would be lost at the time of constructing the parallel parking and widened sidewalks. In some cases it may be advantageous to continue use of some parking spaces that are on a combination of public and private land; for instance, along Fourth Street, about ten extra parking spaces could be provided if an agreement can be reached with the adjoining landowner; the agreement would specify how many of the spaces can be reserved for purely private purposes.
2. Large shared parking lots on private property should be created behind buildings at two locations on Old San Carlos; and a similar lot could be created by the reconfiguration of Helmerich Plaza. These parking lots are also shown on Figure 6. A total of 373 parking spaces are shown. Ideally these lots will be created and operated by the private sector through joint efforts of the property owners. However, the town has an important role through its new Land Development Code. The code should require, at the time a landowner chooses to develop or redevelop, that new buildings be placed to the sidewalk and parking spaces moved to the rear. Access to these parking areas can also be controlled through the new code, with flexibility provided for interim solutions. In rare cases, the Downtown Redevelopment Agency may need to use its eminent domain powers. The town should assist visitors in quickly finding parking lots through clear signage along public streets. As new parking spaces are introduced into the downtown area, parts of Lynn Hall park can be returned to true park uses, rather than remaining a parking lot.
3. Parking garages are not essential to serve the moderate infill plan, but a privately financed parking garage could be built at one of the three feasible locations if properly designed. Any parking garage must be placed on the interior of a block, or be built with a "liner building" that faces all streets and visible public spaces. A liner building can provide highly visible retail, office, or live/work spaces in as little as 25 to 30 feet of space between the sidewalk and a parking garage. Garage heights must be limited so that garages do not replace the Gulf as the first impression of those crossing the bridge. Access must be designed so that left turns in or out of the parking garage cannot cross Estero Boulevard. The details of these restrictions can be formulated while the town is reviewing a zoning request for a serious parking garage proposal, but the basic configuration is illustrated on Figure 7 for all three sites.
4. The town should develop a parking management strategy to operate its own parking spaces and those of cooperating private businesses. Parking rates can be varied by hours of the day, or by the season, for various public purposes (as discussed in Appendix A to the new Comprehensive Plan's transportation element). On-street spaces in front of businesses should be reserved for shorter-term parking so that these important spaces are not monopolized by all-

day visitors to the beach. As demand warrants, an electric tram can circulate throughout the area (and down to Bowditch Point and perhaps to the Main Street parking lot on San Carlos Island). Several new technologies for parking management are now available so that parkers need not have correct change or know exactly how long they will stay. Parking revenue can be used for many tourist-related purposes, but maximum revenue should not be the primary goal of the town's parking management strategy.

Old San Carlos Boulevard

This important street appears to have been long “orphaned” since the new bridge routed traffic away, and its future remains in the balance.

On one hand, Old San Carlos is poised for a renaissance. Some property owners have already undertaken modest upgrades and are interested in doing more. There is a sense that the vitality of Times Square could extend into this area. The newly incorporated town government is focused on the details of renewal throughout the core area. The street also has a unique beach-to-bay vista which gives it character, and opportunities for high visibility.

On the other hand, a commitment must be demonstrated to its improvement soon, or this street will further deteriorate. The altered lot layout and other impacts of the bridge have made redevelopment more difficult. Over the years, the fabric of buildings has unraveled, piece by piece, replaced by parking lots and lost space. The street's worn, ill-defined appearance gives all the wrong signals to visitors and would-be investors, and it pulls down the character of the town. Last, the uncertainty revolving around parking strategy further complicates the situation.

But this street *can* be dramatically transformed into a focus of pride for the community, a symbol of progress achieved under today's new local leadership.

Old San Carlos Boulevard should be improved, physically and spatially, as an urgent priority of the Town.

This improvement should include — *as soon as possible* — a reconditioning of the streetscape itself, including wider sidewalks, formalized on-street parking, and design for traffic calming. This improvement must also include the development of a pattern of mixed-use, multi-story buildings positioned along the sidewalks, to frame the space of the street; this is critical to give Old San Carlos life as an integral part of the town core.

These improvements will result in:

- ▶ an enhanced tax base;
- ▶ a more complete menu of shops, restaurants, places of business and other amenities for residents and visitors alike; and
- ▶ a more complete “park-once” environment, encouraging visitors and local residents to walk rather than drive.

The redevelopment of Old San Carlos should leave its basic alignment intact. In particular, the view corridor between Lynn Hall Park and Matanzas Pass should remain open; part of the power of this street's existing form is in its spatial connection from beach to Bay. Therefore the street should be visually framed but not “terminated” at either end.

The Town and CRA should promote the infill of new buildings and improvements to existing buildings, leveraging private investments with incentives and infrastructure projects.

Crescent Street

Vacant lots on Crescent should be targeted for infill with human-scaled, durable buildings. This street will see its land uses evolve slowly over time, and a flexible approach should be adopted with regard to regulating the mixture of commercial and residential uses. At the ground level, Crescent could become the “affordable commerce” street for small-scale, locally owned businesses and startup enterprises, as rising property values make rents more expensive on prominent frontages along Estero Boulevard, Times Square, and (soon) Old San Carlos.

While reconditioning here is somewhat less urgent than improvements on Estero and Old San Carlos Boulevards, Crescent should eventually be physically upgraded to better connect the sidewalks, improve the appearance, and expand the tree canopy.

For motorists Crescent will have an important role as a circulation route, particularly if a parking garage is ever built in the Helmerich Plaza area. Visitors looking for parking would be routed to the right at the foot of the bridge, along Old San Carlos, and along Crescent to the garage. This arrangement would minimize traffic conflicts on Estero Boulevard and at the same time “activate” Old San Carlos. Nevertheless a liberal dose of traffic calming is appropriate here so that these visitors will make their way slowly and safely, on the neighborhood’s terms.

For pedestrians and cyclists, Crescent should become part of an even more natural route around the core area, from beach to Bay and back again. With narrow lanes and other traffic calming features in place, however, note that separate bike lanes would be unnecessary and inadvisable.

Crescent is a more laid-back, eclectic street than Old San Carlos and should retain a more intact residential feel. The mixed uses and predominance of housing and lodging should be maintained even as nonresidential uses expand into this area. Canal-side property owners should be required to orient buildings and the uses within them to the primary public space of the street, but some may choose to focus *also* on the canal side with outdoor dining or patio spaces. In that event, care should be exercised to respect the residential neighbors on the opposite side of the canal by limiting nighttime noise, excessive lighting, or other disturbances.

Intersecting Streets

The interconnectivity of the street network is especially important for distributing traffic and promoting walking. Vacating or abandoning rights-of-way should be avoided. As visitors arrive and turn right at the foot of the bridge, then circulate in search of parking, it is important that they remain able to make turns into parking behind the buildings. While the design of these intersecting streets is important, they are less critical than the high-priority streets such as Old San Carlos. Therefore improvements to First, Second, and Third Streets and to Fifth Avenue should primarily focus on maximizing the connections for pedestrians and optimizing the parking supply.

Helmerich Plaza / Seafarer's Village

The Helmerich Plaza was developed under the auto-oriented, strip shopping center paradigm that was dominant at the time it was conceived, and as a result it is spatially disconnected from its surroundings. Today, the image of this bland center appears out of sync and out of scale with its vibrant context. Not surprisingly, the center shows signs that it is underperforming business-wise, including vacancies and rapid tenant turnover — despite the fact that a few hundred feet away, merchants and restaurateurs are thriving. (Note that the bustling Times Square scene is said to be notoriously deficient in parking, while this parking-oriented strip center, with large lots right in front of the buildings, appears less successful. Perhaps this gives credence to the notion that towns can better withstand a shortage of parking than they can a shortchanged sense of place.) The strip center as it stands today has such a weighty visual impact that it likely has had a chilling effect on the redevelopment prospects of properties all around it.

This area presents a significant opportunity for redevelopment that improves the neighborhood in several ways:

First, the visual blight can be replaced with a positive, engaging, skyline — an extension of the town's eclectic architecture.

Second, a pedestrian-hostile scene can be replaced with one that welcomes walking.

Third, an underperforming real estate asset and part of the tax base can be boosted to its real potential, improving prospects for other surrounding properties as well.

Last, its redevelopment can lead to new efficiency in a managed parking supply, which could help the perceived parking shortage in the area, provided the parking created here is shared under some form of cost-sharing and income-sharing arrangement with neighbors and/or the town.

The key here is to adapt this important commercial property to the present and future realities of the core area: a pedestrian-oriented, street-oriented “park-once” district which places priority on the sense of place.

This means, among other things, that when the property is redeveloped, buildings should be aligned along the block edge, facing outward, and that parking (whether at-grade or in a garage) should be located in the center of the block.

Redevelopment should be coordinated with the Seafarer's Village mall to insure safe and direct pedestrian connections and efficient use of the land. The relationship of Seafarer's Village to Estero Boulevard can be strengthened via street improvements and traffic adjustments at and around the Times Square intersection (see discussion below).

Seafarer's Village was elevated above the sidewalk level prior to the introduction of modern dry-floodproofing methods in Fort Myers Beach. Now that dry-floodproofing has been demonstrated to work, future commercial buildings should be expected to employ it rather than elevated catwalks in order to establish proper relationships of storefronts to the pedestrian public spaces.

Estero Boulevard Pedestrian Crossing

Estero Boulevard makes a sharp turn at Times Square, connecting the Sky Bridge (maintained by the state) with the continuous portion of Estero Boulevard (maintained by Lee County). This spot has one of the highest concentrations of pedestrian crossings in Lee County. A traffic signal was reinstalled for pedestrian usage after the Times Square improvements were completed in 1997. This signal is operated by a push-button on both ends of a crosswalk that runs between Seafarer's Village and the West Coast Surf Shop.

Traffic signals are designed to interfere with traffic flow to serve a specific purpose (usually cross-traffic, but pedestrians in this case). Actual experience with this traffic signal shows that many pedestrians push the button and then cross this narrow section of Estero Boulevard as soon as they see a break in the slow-moving traffic. The traffic signal then changes to red, often long after the pedestrians have gone.

To reduce the traffic signal's constant disruptions to traffic flow, the Town Council has been considering a pedestrian overpass at this location. However, since most people are going to be even more reluctant to climb stairs or wait for an elevator than they are to wait for a traffic signal, a pedestrian overpass would reduce pedestrian crossings substantially only if some type of intimidating barriers are built alongside or in the median of Estero Boulevard. But such barriers run directly against the principle of keeping people out of their cars by enhancing the pedestrian experience, and against the principle of keeping Estero Boulevard as a spine through the island rather than a figurative or literal barrier. Also, physical barriers may present extreme safety hazards if they trap pedestrians in the travel lanes, or if pedestrians try to climb them.

The recommended plan presented here would convert the existing traffic signal from its green-yellow-red cycle to a flashing caution light. A sheriff's deputy who is well-trained in traffic control would be stationed at this location during the entire peak season and during special events to keep traffic flowing smoothly and to break the flow occasionally for groups of pedestrians. The deputy could be stationed upon a pedestal for greater visibility. Wider sidewalks would be constructed on the Seafarer's/Helmerich side of Estero Boulevard. The existing 4-foot-wide traffic separator near the crosswalk would be widened, lengthened, and landscaped to create true pedestrian refuge islands, where pedestrians could safely wait until they see a break in traffic from the opposite direction. See the new configuration in Figure 8.



Figure 8

The extra space required by these refuge islands would come from slightly narrower traffic lanes plus the extra space gained by moving the existing sidewalk from its current location at the edge of the travel lanes to the actual edge of the right-of-way (which is closer to Seafarer's Village and Helmerich Plaza than the current sidewalk). Sidewalks that are even wider, or wider refuge islands, could be built if the owners of Seafarer's Village and Helmerich Plaza would grant sidewalk easements along the edge of their properties.

Further enhancements to this concept would include a different surface in the travel lanes that would provide an audible and tactile signal to drivers. This different surface could be provided by asphalt paver blocks; by conventional asphalt with a textured surface of coarse exposed aggregate; or with an imprinted surface. Another approach would be to raise the travel lanes several inches alongside the refuge islands. Any of these approaches would provide additional signals to drivers that they are passing through a pedestrian zone.

The net result of these improvements would be to create a more comfortable pedestrian environment at this key location, while avoiding the unnecessary interruptions to traffic that are now being caused by the traffic signal.

Bayfront Square

At the Matanzas Pass end of Old San Carlos Boulevard, existing public land should be combined with property obtained from private landowners to create the Bayfront Square (see foreground of Figure 3 and Figure 6). This represents an ambitious undertaking, but the payoff to both public and private interests would be substantial over a long period of time. Public access to the waterfront, and special public spaces which capture the "postcard" character over time are in short supply and will forever grow in importance. The Bayfront Square will be a unique public place; the noisy Times Square scene and the county park are inappropriate for certain kinds of gatherings that will be natural here. The private property which must be acquired to create Bayfront Square will only become more expensive over time, so this effort should begin as soon as practical.

Once the park is created, the resulting reshaped private properties will boast a unique address in the region. Bayfront real estate values (a product of waterfront views and the romance of the spot) will shift inland and increase, as long as open views across the Square to Matanzas Pass are maintained. New buildings, such as an urban inn, should be designed to front the Square in a traditional building type, with windows and balconies facing the waterfront.

The Bayfront Square would be located between the Matanzas Inn and Snug Harbor restaurants . This land is now used as a private parking lot, even though much of it is publicly owned. When the old swing bridge was replaced by the Sky Bridge in 1978, the original alignment of San Carlos Boulevard became Old San Carlos. The short stretch of Old San Carlos from First Street to Matanzas Pass was no longer used for traffic, and, over time, has become the entrance to the Snug Harbor restaurant parking lot. The core of that parking lot is private land, a 13,720-square-foot parcel between First Street and Matanzas Pass. Public portions include:

- ▶ a 9,865-square-foot parcel under the Sky Bridge;
- ▶ a 6,400-square-foot parcel from the original right-of-way of Old San Carlos Boulevard (which is 63 feet wide at this point); and
- ▶ a 890-square-foot parcel in the First Street right-of-way (north of the travel lanes).

The Sky Bridge right-of-way is about 81 feet wide at this point; it extends about 18 feet on each side of the bridge structure high overhead. The right-of-way was originally acquired by the Florida DOT, which has leased this land to Lee County since 1988. Lee County has turned over the parking lots and meters under the bridge to the Town of Fort Myers Beach. Lee County

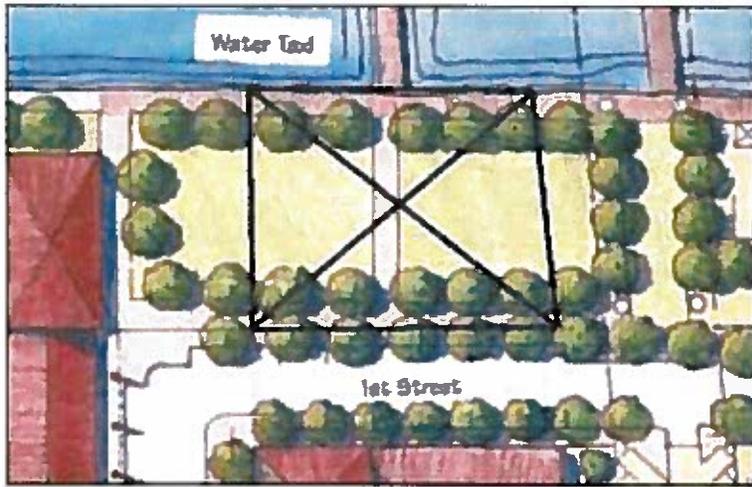


Figure 9, Bayfront Square (existing private land is highlighted)

obtained the original lease at no cost for parking spaces, bus pickup/drop-off areas, and “related transportation facility uses.” The lease requires approval from Florida DOT for additional uses (it also needs to be renewed and changed to reflect the Town of Fort Myers Beach as lessee).

Including the Florida DOT land under the bridge, 55% of the Bayfront Square is already in public ownership. The remaining 45% would have to be acquired (the private parcel is highlighted in Figure 9). The

town will be creating considerable additional parking in the immediate area that will be available to customers of Snug Harbor, making public acquisition more feasible once the new parking is in place. The cost of acquisition and the owners’ willingness to sell have not been determined. Given the nature of the proposed public use of this plaza, grants for tourism-related activities may be available for its acquisition and development.

The Designed Relationship of Buildings, Streets, and Pedestrians

As redevelopment occurs, new buildings and additions to existing buildings should be positioned and architecturally equipped to frame the streets they face and form agreeable public spaces. Likewise, the rights-of-way themselves should have certain elements with proper dimensions. This designed *ensemble of public and private components* is key to establishing streets that are comfortable for pedestrians and economically vital. The following basic urban design conventions characterize virtually every memorable town, and are of paramount importance in a town which hopes to reinforce its resort economy in the new millennium:

Build-to Line:

The best streets take on a defined spatial form, sometimes compared to a public “room”; the buildings form the walls, the street the floor. When the proportion of building height to street width is sufficient to create a sensation of spatial enclosure, a stronger sense of place will result. When the proportion of building height to street width is too low, the environment is ill-defined; this creates an uncomfortable, “lost space” response. This basic idea has been understood since the founding of the earliest villages, and is part of our human way of seeing.

Fronts & Backs:

Similarly, the way the architecture forms the joint between the *private realm* inside the building and the *public realm* shaped by the building is critical to success. Almost every building has a front and a back — a public side and a private side. Great streets have street-oriented architec-

ture, in which the front of the building addresses the street with doors, windows, storefronts, balconies and so forth facing the sidewalk. These features give the building a human presence on the street and generate a feeling that the pedestrian is both welcome and likely to be observed. In one stroke, this approach creates an interesting scene and a safer one. High blank walls, on the other hand, can badly damage the pedestrian environment. (This is particularly important to keep in mind as one implements dry floodproofing.)

Encroaching Elements:

On traditional main streets, certain building elements reach out to embrace part of the public space, providing shade and protection from sudden storms, and reducing glare on storefronts. These include awnings, marquees, colonnades, arcades, and cantilevered balconies, among other devices. These practical elements also create a fine-tuned, middle realm that feels both private and public, and they give a human touch to the geometry of commercial buildings — the same way front porches do for houses. The arcades and colonnades can be permitted to have enclosed space above the sidewalk, which can generate extra income and helps further frame the street.

Sidewalks:

Sidewalks should be generous in these core area locations. Sidewalk widths of 12 to 15 feet should be considered minimal. Like the proportions of street widths to building heights, these dimensions stem from the physiology of the human body; studies show that pedestrians prefer places where the sidewalks are wide enough to allow two couples to pass. A width of 14 feet or more is sufficient to allow limited outdoor dining, which is very effective at creating the animated street presence that people enjoy.

Trees:

Street trees help establish the defined sense of space when buildings are not there, provide shade and visual relief, and help clean the air. Street trees in this context should be of similar species, should be aligned, and should have fairly consistent spacing. Note however that the full-blown use of street trees is not critical in the main street setting of Old San Carlos, where architectural elements should do much of the same job, and where the trees may interfere with clear views to signage and merchandise.

Parking:

On-street parking will be as important to creating pedestrian comfort, controlling speeders, and promoting redevelopment as it is to providing needed parking spaces! The on-street parking provides a buffer between the person walking and the moving cars in the travel lanes, and this effectively removes the fear that a motorist will lose control and hit the pedestrian. It also makes the motorist more alert, for a “traffic calming” effect.

Travel Lanes:

As part of the overall traffic calming approach, the travel lanes should be “right-sized,” at about ten feet per lane. This width is proven safe but is narrow enough to promote alertness and discourage speeding. Wider travel lanes invite higher speeds and promote carelessness. Old San Carlos Boulevard, Crescent Street, and the intersecting streets are *not* highways. They should be designed for slow-moving traffic.

Illustrations of Design Concepts:

The following sketches illustrate some of the principal design concepts discussed above. Figures 10 and 11 show cross-sections of Old San Carlos Boulevard for portions with rights-of-way at 63 feet and 66 feet respectively.

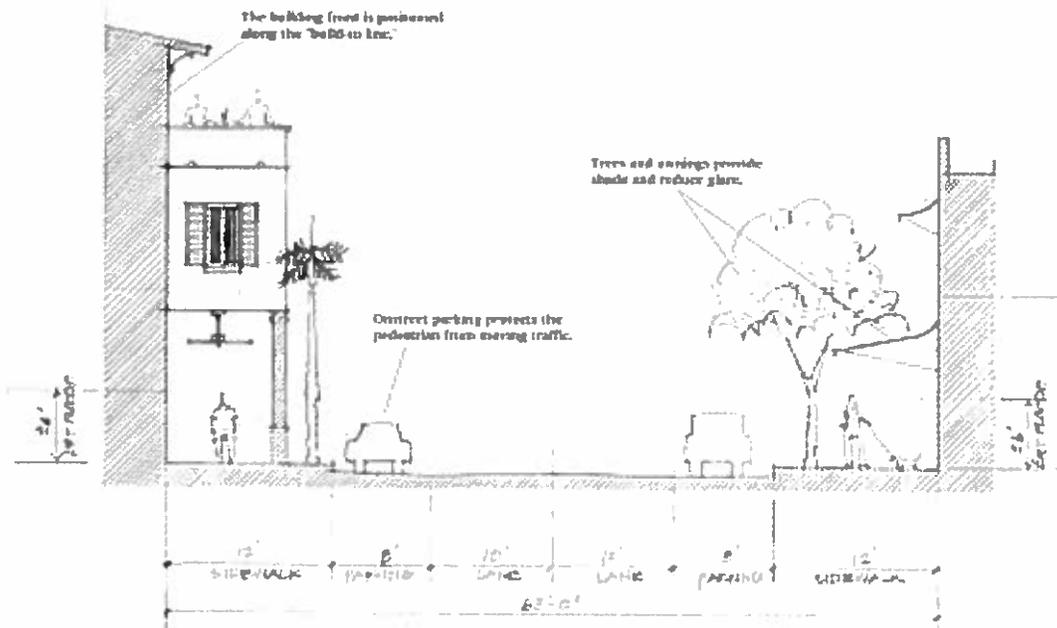


Figure 10, 63' right-of-way

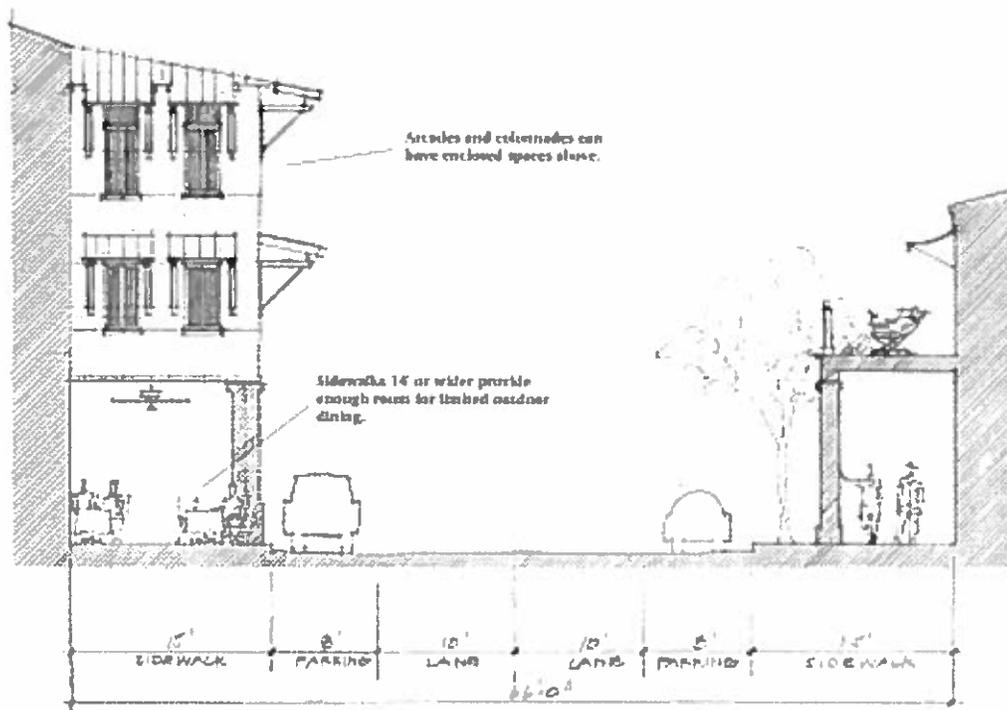


Figure 11, 66' right-of-way

Figure 12 shows a cross-section of Crescent Street with a right-of-way width of 42 feet. Figure 13 illustrates the “liner building” concept for separating parking garages from pedestrian-oriented streets. Figures 14 through 17 suggest the variety of building types that are compatible with these urban design principles.

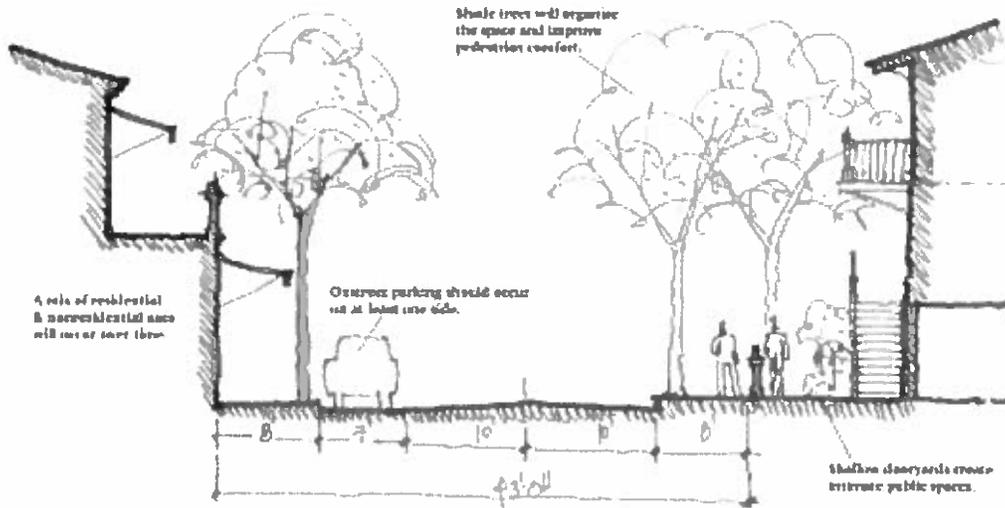


Figure 12, 43' right-of-way

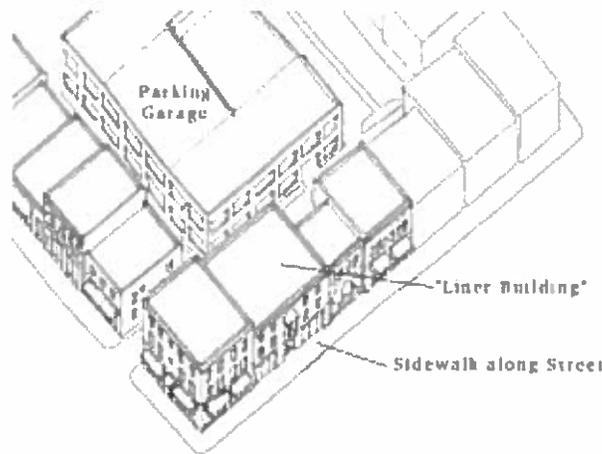


Figure 13, liner buildings surrounding parking garage

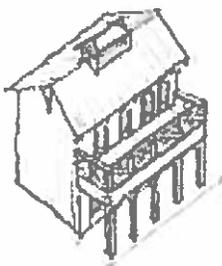


Figure 14



Figure 15

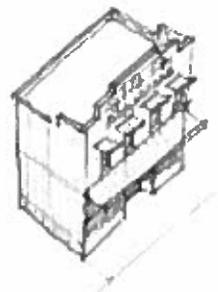


Figure 16

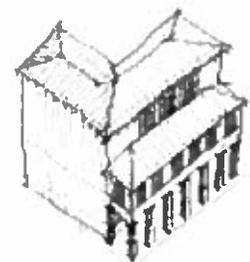


Figure 17

Strategies for Implementation

Phasing of Improvements

Construction in the public right-of-way always causes temporary disruption to the daily activities of the people who live and work in the area. The same will be true for the residents, merchants, and visitors in this section of Fort Myers Beach. The challenge is to reduce the impact as much as possible by selecting the proper sequencing of the various phases. This will allow areas to be improved, such as substitute off-street parking prior to the demolition of the existing head-in parking that now blocks the wider sidewalks shown in the plan. All construction work should be performed during the off-season to minimize the impacts on everyone. Six phases are proposed:

Phase I – Estero Boulevard from Crescent to Fifth Street

Design and construct changes to the median on Estero Boulevard from Crescent to Fifth Street to convert it to pedestrian refuges. The new textured crosswalk will signal motorists to use extra caution in this area. Sidewalks on the Bay side of Estero Boulevard will be widened and completed according to the original plan. Design work on this phase could begin as soon as state and county official concur with the concept, and construction could begin either just before or just after the next tourist season.

Phase II – Shared Parking Lots

The town should provide regulatory incentives through the new Land Development Code for property owners to construct the shared parking shown on Figure 6. These lots should be improved prior to the construction of the streetscape on Old San Carlos Boulevard.

Phase III – Old San Carlos Boulevard

Once some of the new shared parking is in place, the streetscape for Old San Carlos can be designed and constructed. The improvements include new twelve-foot wide patterned and textured concrete sidewalks on both sides of the street. Shade trees will protect the pedestrian along the walk. The street section will contain parallel parking on each side of the street and two drive aisles. New street lighting and street furniture will provide amenities to the shoppers. An engineering firm will have to be retained to prepare complete construction documents and guide the town through bidding and construction management. Engineering should begin as soon as the town identifies suitable funding for construction.

Phase IV – Right-of-Way Acquisition

The town will need to acquire additional right-of-way for Crescent Street between Fourth Street and Estero Boulevard and acquire the private portion of the proposed Bayfront Square. Without these acquisitions, neither project can proceed. After land is acquired, the improvements can be designed and constructed, including the trolley stop and water taxi landing.

Phase V – Crescent Street and connecting streets

After the shared parking and major commercial street are completed, the design and construction of the streetscapes for Crescent, First, Second, and Third Streets and Fifth Avenue should be carried out. The design of this area is similar to the Old San Carlos Street except that smaller rights-of-way and lower pedestrian usage dictated a less ambitious layout.

Phase VI – Lynn Hall Park

Design and construction of Lynn Hall Park will include conversion of a portion of the existing parking lot into beach volleyball courts or other active organized activities. The sidewalks and coconut palm landscaping of Estero Boulevard should continue along the length of the park, along with improved pedestrian connections between the park and Times Square.

Potential Funding Sources

This report identifies seven sources of funding that may be applicable to Fort Myers Beach for this project:

Special Taxing District

A special taxing district for the Old San Carlos / Crescent Street Area could provide a revenue source both for the funding of bond sales and long-term maintenance. The basis of the tax could be related to the building frontage on Old San Carlos or to the lot area of each property. In this way, the property owners who will benefit most from these improvements can pay an appropriate share of its cost.

Downtown Redevelopment Authority

Residual funds from the Estero Island Community Redevelopment Agency (CRA) could be an important source of funding, since this project is a direct extension of the CRA's planning efforts during the early 1990s. The town's new Downtown Redevelopment Agency (DRA) could use tax increment financing (TIF) as a pledge to repay bond debt if bonds are sold to advance construction. Or the town could loan funds to the DRA to be repaid from future TIF revenues.

Gas Taxes and Impact fees

The town collects road impact fees and receives a share of gasoline taxes that can be used only on the transportation system. The town could earmark some of those funds for this project.

Governmental Grants

Governmental grants from county, state, or federal levels could provide supplemental funds for certain components of the project. The Florida Communities Trust provides money for cities and counties to implement their Comprehensive Plans; a grant from this source was obtained by the town to purchase the Mound House on Connecticut Street. Other financial support could be available from the local and state sources that promote tourism; the town has already been successful in obtaining one such grant for improvements near Times Square.

Parking Revenues

Parking revenue or taxes on parking could also provide part of the revenue stream to reimburse construction loans. On-street parking spaces are proposed for 226 cars; parking meters on those spaces will generate revenue. If the town were to purchase land and develop one or more shared parking lots, additional revenue could be generated. The moderate infill plan proposes a total of 373 off-street shared parking spaces. If meters were installed in all of these parking stalls and each meter generated \$1,000 per year, then \$599,000 could be used to reimburse construction loans. However, all improvement costs would then be borne by the town.

Contributions

Another source of revenue could be contributions from individuals, organizations, corporations, and foundations. Several cities have used this approach to funding special attractions. New Orleans funded their new aquarium in part from contributions. Bricks that form the entry courtyard might have the name of a donor on them. Other cities give acknowledgments to contributors of benches or trees. This approach will never completely cover the construction cost but it can help, while donors gain a sense of involvement in the street improvements and take pride in showing friends and visitors their brick or area of contribution.

Tolls

A future source of revenue could be bridge tolls if the town were to take over maintenance of San Carlos Boulevard. This would be a long-term project with important fiscal impacts on the town.

Estimated Cost for Old San Carlos Improvements

To establish the construction estimate for Old San Carlos Boulevard, information from several different sources was collected:

- ▶ Experience from recent streetscape projects in South Florida
- ▶ Industry standards
- ▶ Preliminary cost estimate of the project site

Recent South Florida Streetscapes

During the past two years, several projects have been estimated, bid and/or constructed that give an indicator for estimating the costs of the construction work on Old San Carlos Boulevard. The following table compares the per-linear-foot construction costs of several recent South Florida projects.

<u>LOCATION</u>	<u>YEAR BUILT</u>	<u>COST PER LINEAL FOOT</u>	<u>REMARKS</u>
South Miami, FL 500 linear feet \$1,000,000	1998	\$2,000	Includes A & E fees; contractor's general conditions; premium time, 12-foot-wide concrete sidewalks; parallel parking and 3 lanes of asphalt street paving; underground utilities; irrigation; street; trees, furniture, lights and drainage.
Winter Park, FL 625 linear feet \$1,434,300	1998	\$2,295	Includes A & E fees; contractor's general conditions; premium time, 12-foot-wide brick sidewalks; parallel parking and three lanes of brick streets; underground utilities; irrigation; street; trees, lights, furniture and drainage.
Fort Myers Beach, FL Est. Times Square to Lani Kai 1,000 linear feet \$847,681 (south side of Estero Blvd. only)	1997	\$847, or \$1,694 for both sides of Estero Blvd.	Does not include A & E fees, street furniture, irrigation, signs or ½ of the general conditions. Does include 10-foot-wide concrete sidewalks with fancy pavers, decorative light poles, landscaping (coconut palms)

Industry guidelines

In 1998, firms that specialize in urban streetscapes suggested using an average estimate of \$4 million per mile or \$757 per linear foot. All per-linear-foot costs assume building both sides of the street including the sidewalks. The high end of the cost range would be about \$6 million per mile or \$1,136 per linear foot. These figures do not include architectural/engineering fees. It is always difficult to estimate construction costs, especially without complete contract documents for material and labor take-off. Also, there are many site-specific factors that influence this cost. Such factors include:

- ▶ Building locations
- ▶ Utility locations
- ▶ Drainage improvements
- ▶ Soil conditions
- ▶ Topography
- ▶ Degree of accommodations with existing building access and traffic
- ▶ Availability of materials
- ▶ Quality of materials
- ▶ Construction environment at time of bidding

Preliminary cost estimate

To aid in developing a financing plan for the constructing the Old San Carlos Boulevard streetscape, a preliminary cost estimate was developed. Both the quantities and the assumed cost can be questioned and modified, and the spreadsheet modified accordingly, as information becomes more defined.

The considerations and assumptions for this estimate are:

- ▶ The length of Old San Carlos Boulevard is 1,270 linear feet.
- ▶ This street section contains two drive lanes and two parallel parking lanes.
- ▶ Sidewalks are twelve feet wide of color impregnated concrete with patterned banding and textured surfaces.
- ▶ Streetlights and furniture will be high quality and salt resistant.
- ▶ Street surface will be partial new base and complete asphalt topping with striping.
- ▶ Trees will be large native shade trees in planting wells with tree grates.
- ▶ Undergrounding of cable television and telephone utilities will be one-quarter of the electrical quote because of shared trenching and reduction in complexity and size of the materials.
- ▶ No sanitary sewer work will be required.

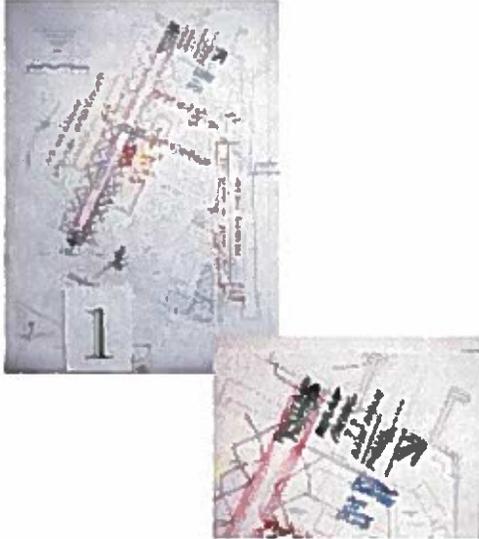
Using these conditions and assumptions the estimate for the streetscape for Old San Carlos Boulevard will be approximately \$1,483,000, or \$1,168 per linear foot of construction. The breakdown of this estimate into its components is found in Appendix C.

Conclusion

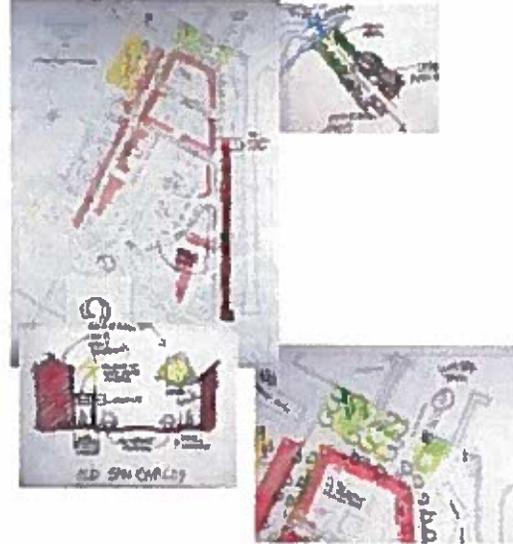
The preliminary cost estimate for the Old San Carlos Boulevard streetscape improvements is \$1,483,000. This figure could increase if major drainage improvements are required or could change due to other unknown factors. Most of these factors will become apparent during the engineering design phase of this project; construction costs should be re-estimated at that stage.

Appendix A — Workshop Drawings

Group 1



Group 2



Group 3



Group 4



This is a compilation of images from the November 16, 1998, workshop

Appendix B — Participants in 11/7/98 Workshop

Linda Beasley
Johanna Campbell
Anita Cereceda
George Crawford
Michel Dailey
Julie Dattwyler
Betty Davis Simpson
Skip Franklin
Bob Gaydos
Lena Heyman

Ron Himmelmann
Dan Hughes
Keenan Johnson
Gretchen Johnson
Don Luppino
John Mulholland
Ray Murphy
Dave Parilla
Don Powell
Garr Reynolds

John Richard
Mike Roeder
Millee Roleb
Mohsen Salehi
Axel Schulz
Marsha Segal-George
Roxie Smith
Doug Speirn-Smith
Sandi Suter
Bill Whittaker

Appendix C — Breakdown of Preliminary Cost Estimate

STREETS & SIDEWALKS					
Item	Item Description	Quantity	Unit	Unit Cost	Item Cost
Mobilization & Traffic Control					
1	General conditions	1	LS	\$228,000	\$228,000
2	Traffic control - Vehicular	1	LS	\$20,000	\$20,000
3	Traffic control - Pedestrian	1	LS	\$15,000	\$15,000
4	A & E Fees	1	LS	\$73,300	\$73,300
Demo. & Construction of Roadway					
1	Remove curbing	3000	LF	\$7.00	\$21,000
2	Remove asphalt & base for c & g	1130	SY	\$10.00	\$11,300
3	Curb and gutter	3000	LF	\$12.00	\$36,000
4	Asphalt street & base	5640	SY	\$20.00	\$112,800
5	Concrete crosswalks (12)	240	SY	\$35.00	\$8,400
Demo. & Construction of Sidewalk					
1	Remove curb cuts, sidewalk, etc.	1400	SY	\$9.00	\$12,600
2	4" concrete sidewalk textured	3400	SY	\$35.00	\$119,000
3	6" concrete driveway	220	SY	\$27.00	\$5,940
Subtotal					\$663,340
UTILITIES					
Storm Sewer					
1	Storm inlet (estimate)	10	EA	\$3,500	\$35,000
2	Pipe (estimate)	800	LF	\$40	\$32,000
Electrical Distribution					
1	FP & L quote on undergrounding	1	LS	\$373,900	\$373,900
2	Cable conversion	1	LS	\$75,000	\$75,000
3	Telephone conversion	1	LS	\$75,000	\$75,000
4	Streetlight foundation	46	EA	\$350	\$16,100
5	Standard light pole/fixture	37	EA	\$900	\$33,300
6	4 globe light pole/fixture	9	EA	\$3,200	\$28,800
7	Junction box conduit system	1	LS	\$25,000	\$25,000
Subtotal					\$694,100
FURNISHINGS & LANDSCAPING					
Signage & striping					
\$0					
1	Remove exist./install new signs	1	LS	\$4,000	\$4,000
2	Furnish & install pole signs	12	EA	\$900	\$10,800
3	Striping	1	LS	5,000	\$5,000
Furnishings					
1	Benches	7	EA	\$1,000	\$7,000
2	Trash receptacles	16	EA	\$900	\$14,400
3	Bike racks	6	EA	\$600	\$3,600
4	Tree Grates	39	EA	\$900	\$35,100
5	Kiosks	3	EA	\$2,400	\$7,200
Landscaping					
1	Large shade trees - 200 gal.	39	EA	\$1,000	\$39,000
Subtotal					\$126,100
TOTAL					\$1,483,540

Appendix D — Parking Computations

Parking count data

One objective of this study is to develop a downtown parking policy based on local conditions. Most individuals at the workshop stated that the shortage of parking was a problem. An early technical task was to gather accurate information on existing conditions.

Two types of information are required to understand whether the parking for this area is adequate. The first is the actual number of parking spaces, and the second is the size of the buildings and their uses. Buildings used for entertainment have a larger parking demand than those used for retail. Retail buildings have a more intensive parking requirement than residential.

Existing parking counts and building sizes were taken from 1996 aerial photographs. Although some changes have occurred since 1996, these tabulations give an accurate appraisal of parking in the downtown area.

Three charts have been developed with data on:

- ▶ Existing conditions (as illustrated in Figure 5)
- ▶ Moderate infill scenario with surface parking (as illustrated in Figure 6)
- ▶ More intense infill scenario with parking garages (as illustrated in Figure 7)

Each chart corresponds to one of the figures which show street configuration, building locations, off-street and on-street parking, and parking garages. The complete charts are available on request to Spikowski Planning Associates. The conclusions of these charts and the assumptions on which they are based are described below.

Existing conditions

Existing levels of development would require parking spaces for 1,605 cars under the most lenient published standard, the Urban Land Institute's 1983 publication, *Shared Parking*. Parking is presently provided for 769 cars. This means the existing parking supply for this area is only 48% of the theoretical requirement. There are however certain characteristics of Fort Myers Beach that alter the need for parking, including:

- ▶ "Park-once" area. People park once and visit the beach, eat in a restaurant, and purchase a gift before getting back into their car.
- ▶ Many people visiting these same stores, restaurants, and beaches have parked their car at their motel or cottage and walked. They do not need a separate parking space ready for them at each destination.
- ▶ Because of the difficulty in moving about Fort Myers Beach in a car, many people car-pool instead of driving separately.
- ▶ The mild weather makes walking pleasant during the peak tourist season.

It would not be proper to conclude that the parking ratio should remain at 48%; the current parking situation is clearly inadequate. It would be equally improper to conclude that 100% of the published standard is needed, as this would require the elimination of at least one-half of the existing shops, restaurants, motels, cottages, and houses from the area. The proper percentage for the parking ratio is perhaps 55% to 60% of the published standard.

Moderate infill with surface parking

This plan shows the development of the shared parking concept and new on-street parking as a result of the streetscape projects (see Figure 6). On-site parking is provided for 832 cars; on-street parking is provided for 347 cars. The parking ratio at this level of development is 57%. Building areas have increased by 236,996 square feet, or about double the present building area. This development can occur if all of the proposed parking improvements are constructed.

More intense infill with parking garage(s)

This final plan shows a 154,556-square-foot increase in building size over the moderate plan, with an 81% parking ratio achieved if all three parking garages were constructed. If a lower parking ratio is desired or less building construction is anticipated, smaller or fewer parking garages could be provided. Effects of this more intense buildout plan on the road network have not been analyzed.

Attachment E

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 02-12

WHEREAS, the Fowler Company, representing the Snug Harbor Restaurant, has requested that the Town approve two variances in the Fort Myers Beach Core Area Overlay C-1 Zoning District to allow the development of the property with a standard restaurant with outdoor seating:

1. From the required street setback of 25 feet (First Street) per LDC Section 34-2192(a), to allow a 0-foot street setback;
2. From the required 128 on-site parking spaces for a standard restaurant with an outdoor seating area per LDC Section 34-2020(2)l., to allow 0 on-site parking spaces; and

WHEREAS, the subject property is located at 1131 First Street, Fort Myers Beach, in S24-T46S-R23E, Lee County, Florida; and

WHEREAS, the applicant has indicated the property's current STRAP number is 24-46-23-W3-00004.0000, and the legal description for said property is contained in Exhibit "A," which is attached hereto; and

WHEREAS, the Local Planning Agency had recommended that the Town Council approve the requested variances with five specific conditions; and

WHEREAS, a public hearing was held and the Town Council considered the following criteria, the recommendations and testimony of town staff and consultants, testimony from the applicant and his representatives, and testimony from the public.

IT IS THE FINDING of the Town Council that:

- a. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district;
- b. The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance;
- c. The variances being granted are the minimum variances that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
- d. The granting of the variances will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- e. The condition or situation of the specific piece of property for which the variances are sought is not of so general or recurrent nature as to make it more reasonable and practical to amend the ordinance.

NOW THEREFORE BE IT RESOLVED THAT THE TWO VARIANCES ARE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS AND REQUIREMENTS that are necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public and that are reasonably related to the variances requested:

(1) The variances are limited to the 2-story, 10,058-square-foot restaurant shown on the 2-page site plan titled "Snug Harbor Fort Myers Beach Florida," which was marked Attachment C in the Staff Report and which is incorporated herein by reference;

(2) The applicant has agreed to enter into a non-exclusive pedestrian access agreement with the Town that places binding permanent restrictions along the bay front to maintain public pedestrian access connecting Old San Carlos Boulevard with State Road 865 (right-of-way under Sky Bridge). This pedestrian access is 10 feet wide and provides perpetual pedestrian access along a continuous dock waterward of the existing seawall to connect the two pedestrian plazas planned by the Town on the west and east sides of the applicant's property. This pedestrian access agreement is attached hereto as Exhibit "B" and shall also be recorded in the public records of Lee County.

(3) The applicant will provide the number of parking spaces that the land development code requires for the restaurant and other uses on this property at the time a development order is issued, but these spaces shall be placed in *off-site* parking lots located near Snug Harbor. Valet parking may be used to accommodate the number of required spaces. These off-site lots may include:

- the existing restaurant lot at 645 Old San Carlos (STRAP 24-46-23-W3-00026.0000)
- the boat lot at 441/445 Old San Carlos (STRAP 24-46-23-W3-00026.0030)
- the Powell lot at 401 Old San Carlos (STRAP 24-46-23-W3-0030A.0010 & 0020)
- the laundromat lot at 343 Old San Carlos (STRAP 24-46-W3-0050A.0010 & 0030B.0010)

(4) Use of the building occupied by the existing Snug Harbor Restaurant will cease upon issuance of a Certificate of Occupancy for the new restaurant building. Any use of the existing building must comply with all applicable regulations.

(5) Both site and architectural design of this restaurant must be substantially in accordance with and limited to the architectural elevations submitted at the Town Council hearing on March 11, 2002, and marked Exhibits C-1, C-2, C-3, C-4, C-5, and C-6, and attached hereto, except for the south elevation (First Street) as portrayed in Exhibit C-6 where the applicant has agreed to extend the covered porch on the west elevation to now also surround the first bay of the facade on First Street. The Town has determined that adequate sidewalk space can be made available to accommodate this design, as shown in Exhibit "D" which is attached hereto. The applicant's rights and responsibilities for the placement of the porch's columns and roof over the future First Street sidewalk shall be implemented as described in Exhibit "E" which is attached hereto. The Town agrees to engineer and construct the sidewalk immediately adjoining the restaurant prior to its occupancy at Town expense and to coordinate the engineering design and construction schedule with the applicant so as not to create hardships or delays on either party. Other than the extended porch plus those differences acknowledged at the March 11 public hearing, the site and architectural design of the restaurant shall be substantially in accordance with the commercial building design standards that were attached as Attachment H in the Staff Report and which are incorporated herein by reference.

The foregoing resolution was adopted by the Fort Myers Beach Town Council on a motion by Council Member Van Duzer and a second by Council Member Rynearson; upon being put to a vote, the result was as follows:

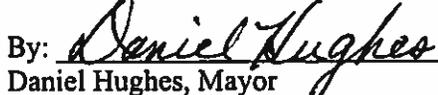
Howard Rynearson	yes
Daniel Hughes	yes
Bill Thomas	yes
W. H. "Bill" Van Duzer	yes
Terry Cain	yes

APPROVED this 11th day of March, 2002.

ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Daniel Hughes, Mayor

Approved as to form by:

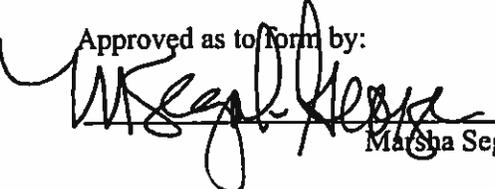

Marsha Segal-George, Acting as Town Attorney

EXHIBIT "A"

VAR 2001-00053

DESCRIPTION:

AS SHOWN IN OFFICIAL RECORDS BOOK 1534 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 PLAT 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 63°17'00" NORTH TO NORTHWEST A DISTANCE OF 99.47 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 885 (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 885; 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 EDMUND 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 885.

LEE COUNTY
RECEIVED
01 DEC -7 PM 2:47
COMM. DEV./
PUB. WRKS. CNTR.
SECOND FLOOR

Applicant
by Jm 12/17/01

1. Grantor hereby grants to Grantee a non-exclusive right of pedestrian access across the Dock.

2. Grantee's rights of access to the Dock shall be subject to and conditioned upon all terms and conditions of the Submerged Land Lease. This access shall be irrevocable except:

- a. upon mutual consent of the parties hereto; or
- b. If the Grantor determines, in his sole discretion, that an imminent threat to public health, safety or welfare exists, including, but not limited to, damage or disrepair to the Dock which creates a hazardous condition. In this event, the Grantee shall be notified no later than 48 hours after Grantor has closed the Dock. The Grantor shall take all reasonable action necessary to reopen the Dock as soon as possible.

3. Grantor shall maintain the Submerged Land Lease or any amendments thereto in good standing, including all lease payments due the State of Florida thereunder and shall timely apply for renewals prior to the termination of each term of said Submerged Land Lease.

4. Grantee's use of the property shall be subject to all existing and future easements, agreements, licenses, covenants and conditions, governmental or private, affecting the property but in no event, shall any use be made of this area that would be contrary to its continued public use as a pedestrian access from Old San Carlos Boulevard to State Road 865 (right-of-way under Sky Bridge).

5. Grantor agrees that Grantee shall have reasonable access over and across that portion of the Dock described in Exhibit "C", except that Grantor reserves the right to construct and/or place such things on the Dock, including, but not limited to, dock boxes, utility pedestals, pump out stations, cleats, ladders and other items commonly associated with the ordinary and customary use of a dock, but in no event shall the placement of these structures on the Dock prevent, inhibit or impair pedestrian access across the Dock described in Exhibit "C".

6. In the event of a catastrophic occurrence which causes damage to that portion of the Dock described in Exhibit "C", to the extent that the Dock becomes unuseable or unsafe for pedestrian access, then Grantor agrees to provide comparable upland access on and over Grantor's upland property_ to Grantee for the period of time necessary to repair the Dock. Subsequent to completion of the necessary Dock repair, the right to upland access by Grantee shall cease.

7. Grantor agrees to provide Grantee temporary access to the upland areas described in attached Exhibits "D" and "E". The temporary access to the upland area delineated in Exhibit "D" shall be valid for a reasonable period of time during which Grantee agrees to diligently pursue a submerged land lease for dock construction and to timely construct said dock in the area located directly west of the current terminus of the Dock described in Exhibit "C".

The temporary access to the upland area delineated in Exhibit "E" shall be valid until such time as Grantor extends the Dock described in Exhibit "C" in an easterly direction to Grantor's eastern riparian property line and Grantee obtains a submerged land

lease for Dock construction and constructs an extension to Grantor's dock in the area located immediately east of the pedestrian access area described in Exhibit "C". Grantor and Grantee agree to diligently pursue all necessary permitting and construction of said Dock extensions.

8. Grantor agrees to reasonably maintain the Dock for the duration of either this Agreement or the Submerged Land Lease, whichever is shorter.

9. Grantee's use of the property shall be between the hours of 8:00 A.M. to midnight, Monday through Sunday and shall be so posted.

10. This Agreement shall terminate only upon the termination of the Submerged Land Lease by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida or upon impossibility of performance by the Grantor.

11. Grantor agrees to hold Grantee harmless from and against any loss or damage to persons or property resulting from a negligent act or omission by Grantor, its agents or assigns concerning actions and obligations of Grantor as set forth in this Agreement.

12. Grantor agrees to name Grantee as an additional insured on its insurance liability policy with respect to pedestrian usage of the Dock pursuant to this Agreement.

13. This Agreement shall be recorded in the Public Records of Lee County, Florida.

14. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee's successors and/or assigns.

15. Grantee shall have the right of specific performance to enforce the terms of this Agreement.

16. Any modification of this Agreement shall be binding only if evidenced in writing, signed by each party.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be signed as of the dates below indicated.

Signed Sealed and Delivered in the presence of:

WITNESSES:

Steph T. Lund
Leslie A. Cowhollow

GRANTOR:

KIRIC INVESTMENTS, INC., a Florida corporation

By: [Signature]
G. Edward Cusick, Vice President

GRANTEE:

TOWN OF FORT MYERS BEACH, FLORIDA, a municipal corporation

By: [Signature]
Daniel L. Hughes, Mayor

Attest:

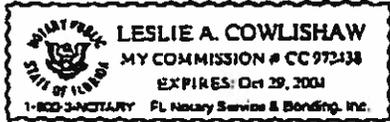
[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
Marsha Segal-George, Esq.
Acting Town Attorney

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29th day of April, 2002, by G. Edward Cusick, as Vice President of Kiric Investments, Inc., a Florida corporation. He is personally known to me or has produced _____ as identification.



Leslie A. Cowlshaw
Notary Public
Printed Name: Leslie A. Cowlshaw

My Commission Expires: Oct 29, 2004

EXHIBIT "A"

THE PROPERTY:

DESCRIPTION AS SHOWN IN OFFICIAL RECORD BOOK 1534 AT PAGE 1851 AND OFFICIAL RECORD BOOK 2565, 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 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS FURTHER DESCRIBED AS FOLLOWS:

STARTING AT THE SOUTHWEST CORNER OF LOT 26, BLOCK "E" OF CRESCENT PARK ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4 AT PAGE 46 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 26, SAID LINE ALSO BEING THE EASTERLY LINE OF SAID SECTION 24 A DISTANCE OF 21.95 FEET; THENCE NORTHWESTERLY AT AN ANGLE OF 63°17'00" NORTH TO NORTHWEST A DISTANCE OF 99.47 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 EDMUND 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.

33328DESC1

6/7/02

EXHIBIT "B"

OVERALL DOCKS

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

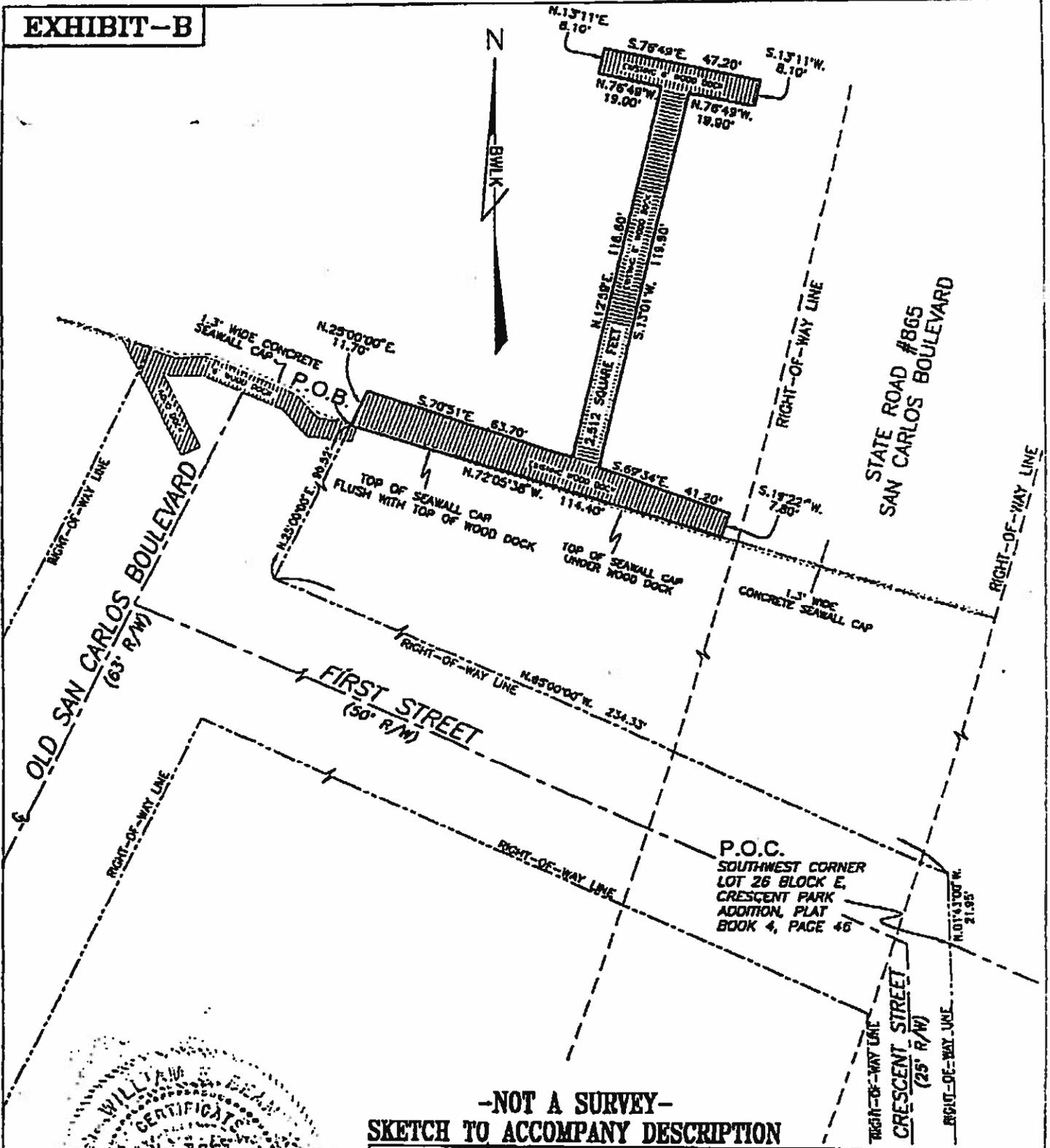
STARTING AT THE SOUTHWEST CORNER OF LOT 26, BLOCK "E" OF CRESCENT PARK ADDITION SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4 AT PAGE 46 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N01°43'00"W ALONG THE EAST LINE OF SAID SECTION 24, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY LINE OF CRESCENT STREET FOR 21.95 FEET; THENCE N65°00'00"W ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF FIRST STREET (50.00 FEET WIDE) FOR 234.33 FEET TO THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE WITH THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD (63 FEET WIDE); THENCE N25°00'00"E ALONG SAID OLD SAN CARLOS BOULEVARD RIGHT-OF-WAY FOR 90.52 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE N25°00'00"E FOR 11.70 FEET ALONG THE NORTHWESTERLY LINE OF AN EXISTING DOCK; THENCE S70°51'00"E ALONG THE NORTHERLY LINE OF SAID DOCK FOR 63.70 FEET; THENCE N12°59'00"E ALONG THE NORTHWESTERLY LINE OF SAID DOCK FOR 118.60 FEET; THENCE N76°49'00"W ALONG SAID DOCK FOR 19.00 FEET; THENCE N13°11'00"E ALONG SAID DOCK FOR 8.10 FEET; THENCE S76°49'00"E ALONG SAID DOCK FOR 47.20 FEET; THENCE S13°11'00"W ALONG SAID DOCK FOR 8.10 FEET; THENCE N76°49'00"W ALONG SAID DOCK FOR 19.90 FEET; THENCE S13°01'00"W ALONG SAID DOCK FOR 119.90 FEET; THENCE S69°34'00"E ALONG SAID DOCK FOR 41.20 FEET; THENCE S19°22'00"W ALONG SAID DOCK FOR 7.80 FEET TO A POINT ON A SEAWALL; THENCE N72°05'38"W ALONG SAID SEAWALL FOR 114.40 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 2512 SQUARE FEET, MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEARING N25°00'00"E.

SAID PARCEL SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY.

EXHIBIT-B



**-NOT A SURVEY-
SKETCH TO ACCOMPANY DESCRIPTION**

WILLIAM E. BEAN
 CERTIFICATE
 THIS IS NOT A SURVEY
 Bean, Whitaker, Lutz & Kareh, Inc.
 WILLIAM E. BEAN
 Florida Certification No. 3261

Bean, Whitaker, Lutz & Kareh, Inc. (L84819)
CONSULTING ENGINEERS AND SURVEYORS

13041 MCCRECOR BOULEVARD-SUITE 1, FORT MYERS, FLORIDA 33919-3810 (847) 481-1331

SK333288.DWG

DATE	PROJECT NO.	OWNER BY	SCALE	SHEET	FILE NO. (S-T-R)
6/07/02	33328	W.F.	1" = 40'	2 OF 2	24-46-23

EXHIBIT "C"

THE DOCK:

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

STARTING AT THE SOUTHWEST CORNER OF LOT 26, BLOCK "E" OF CRESCENT PARK ADDITION SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4 AT PAGE 46 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N01°43'00"W ALONG THE EAST LINE OF SAID SECTION 24, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY LINE OF CRESCENT STREET FOR 21.95 FEET; THENCE N65°00'00"W ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF FIRST STREET (50.00 FEET WIDE) FOR 234.33 FEET TO THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE WITH THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD (63 FEET WIDE); THENCE N25°00'00"E ALONG SAID OLD SAN CARLOS BOULEVARD RIGHT-OF-WAY FOR 90.52 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N25°00'00"E ALONG THE NORTHWESTERLY EDGE OF THE DOCK FOR 11.70 FEET; THENCE S70°51'00"E ALONG SAID DOCK FOR 63.70 FEET; THENCE S67°50'39"E FOR 8.34 FEET; THENCE S69°34'00"E ALONG SAID DOCK FOR 41.20 FEET; THENCE S19°22'00"W ALONG SAID DOCK FOR 7.80 FEET TO A POINT ON A SEAWALL; THENCE N72°05'38"W ALONG SAID SEAWALL FOR 114.40 FEET TO THE POINT OF BEGINNING.

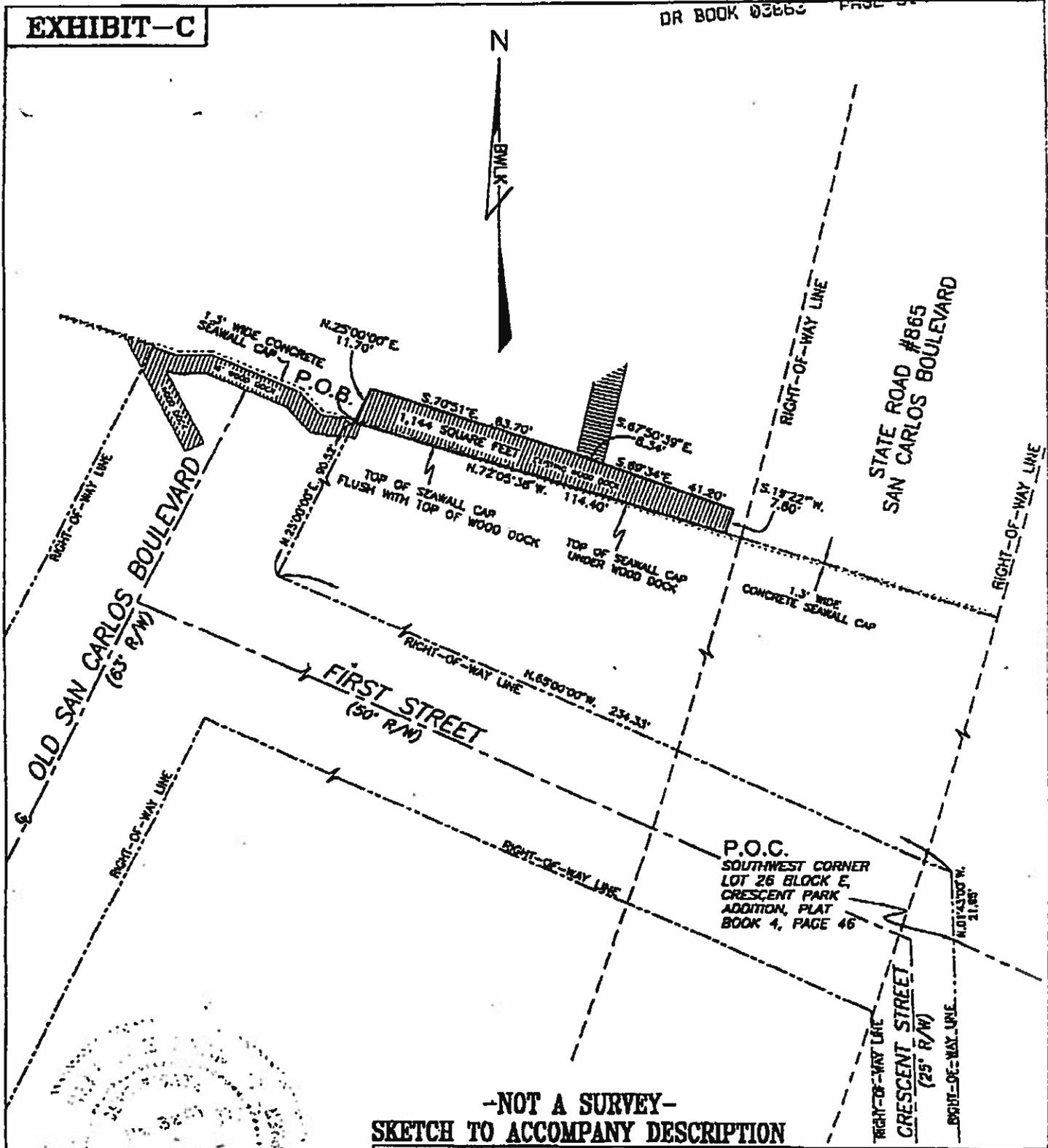
SAID PARCEL CONTAINS 1144 SQUARE FEET, MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEARING N00°25'00"E.

SAID PARCEL SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY.

EXHIBIT-C

DR BOOK 03862 PAGE 3144



**-NOT A SURVEY-
SKETCH TO ACCOMPANY DESCRIPTION**

THIS IS NOT A SURVEY
 Bean, Whitaker, Lutz & Karih, Inc.
 William E. Bean P.E.
 Florida Certification No. 3281

Bean, Whitaker, Lutz & Karih, Inc. (L84818)
 CONSULTING ENGINEERS AND SURVEYORS
 13041 MCCRODOR BOULEVARD-SUITE 1, FORT MYERS, FLORIDA 33918-5010 (841) 481-1331

SK33328C.DWG

DATE 6/07/02	PROJECT NO. 33328	DRAWN BY W.F.	SCALE 1" = 40'	SHEET 2 OF 2	FILE NO. (S-T-R) 24-48-23
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EXHIBIT "D"

TEMPORARY UPLAND ACCESS:

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

STARTING AT THE SOUTHWEST CORNER OF LOT 26, BLOCK "E" OF CRESCENT PARK ADDITION SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4 AT PAGE 46 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N01°43'00"W ALONG THE EAST LINE OF SAID SECTION 24, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY LINE OF CRESCENT STREET FOR 21.95 FEET; THENCE N65°00'00"W ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF FIRST STREET (50.00 FEET WIDE) FOR 234.33 FEET TO THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE WITH THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD (63 FEET WIDE); THENCE N25°00'00"E ALONG SAID OLD SAN CARLOS BOULEVARD RIGHT-OF-WAY FOR 90.52 FEET TO THE POINT OF BEGINNING; THENCE S72°05'38"E ALONG THE EXISTING SEAWALL FOR 10.00 FEET; THENCE S25°00'00"W FOR 8.00 FEET; THENCE N72°05'38"W FOR 10.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD; THENCE N25°00'00"E ALONG SAID RIGHT-OF-WAY LINE FOR 8.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 79.00 SQUARE FEET, MORE OR LESS.

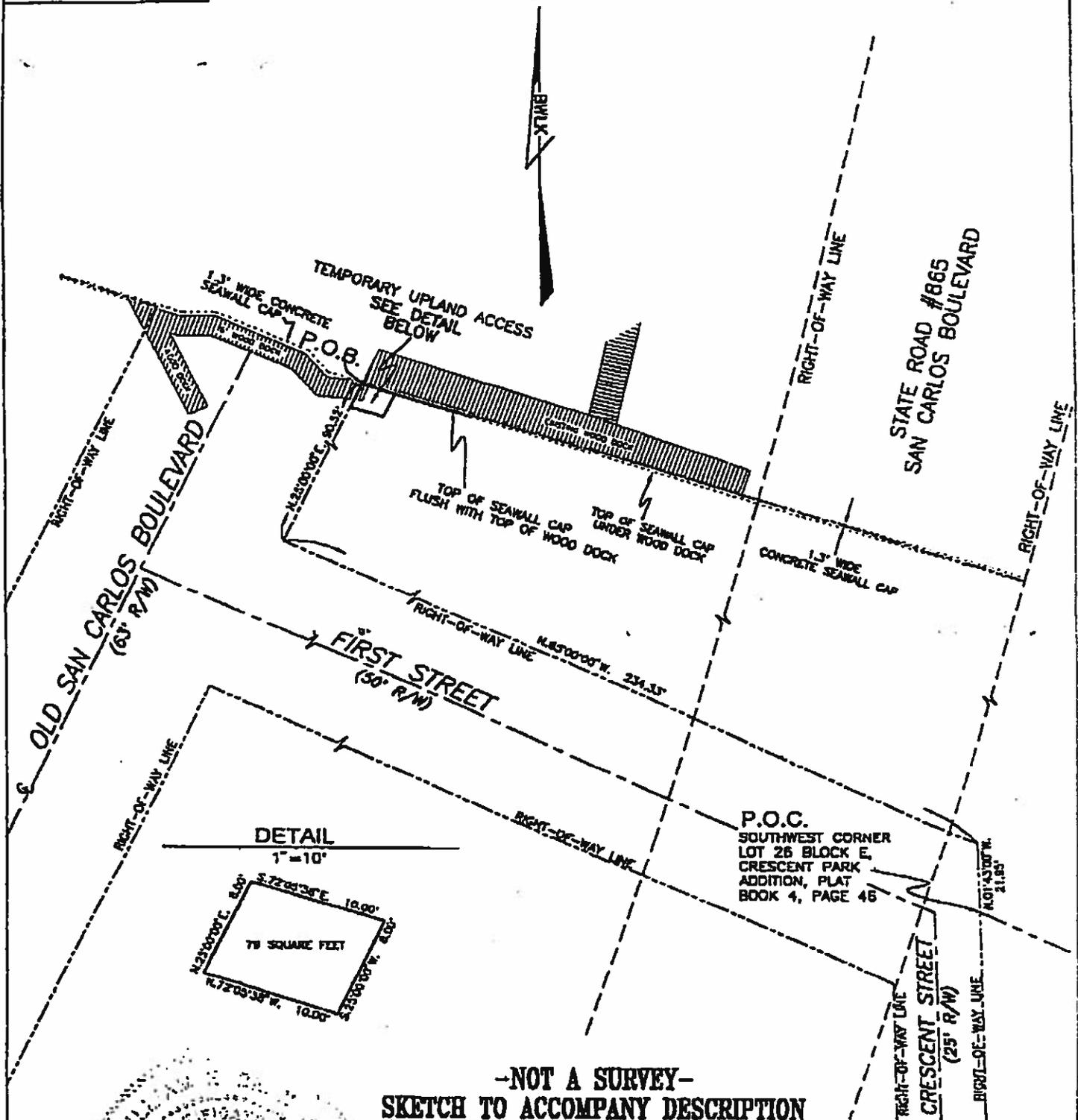
BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEARING N25°00'00"E.

SAID PARCEL SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY.

EXHIBIT-D

OR BOOK 03663 PAGE 3146

N



**-NOT A SURVEY-
SKETCH TO ACCOMPANY DESCRIPTION**

THIS IS NOT A SURVEY
 Bean, Whitaker, Lutz & Karih, Inc.
 W. E. Bean
 WILLIAM E. BEAN P.E.
 Florida Certification No. 3281

Bean, Whitaker, Lutz & Karih, Inc. (L94910)
 CONSULTING ENGINEERS AND SURVEYORS
 13041 MCCREEDOR BOULEVARD-SUITE 1, FORT MYERS, FLORIDA 33919-5010 (841) 481-1331

SK33328D.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-K)
6/07/02	33328	W.F.	1" = 40'	2 OF 2	24-48-23

EXHIBIT "E" OR BOOK 03863 PAGE 3147

TEMPORARY UPLAND ACCESS:

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, GOVERNMENT LOT 1 (ISLAND) OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, WHICH TRACT OR PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

STARTING AT THE SOUTHWEST CORNER OF LOT 26, BLOCK "E" OF CRESCENT PARK ADDITION SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4 AT PAGE 46 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N01°43'00"W ALONG THE EAST LINE OF SAID SECTION 24, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY LINE OF CRESCENT STREET FOR 21.95 FEET; THENCE N65°00'00"W ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF FIRST STREET (50.00 FEET WIDE) FOR 234.33 FEET TO THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE WITH THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD (63 FEET WIDE); THENCE N25°00'00"E ALONG SAID OLD SAN CARLOS BOULEVARD RIGHT-OF-WAY FOR 90.52 FEET TO A POINT ON AN EXISTING SEAWALL; THENCE S72°05'38"E ALONG SAID SEAWALL FOR 104.50 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED EASEMENT; THENCE CONTINUE S72°05'38"E ALONG SAID SEAWALL FOR 15.02 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF NEW STATE ROAD 865, SAID POINT BEING ON A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 2824.79 FEET; THENCE SOUTHERLY ALONG SAID CURVE FOR 8.00 FEET THROUGH A CENTRAL ANGLE OF 00°09'44", SAID CURVE HAVING A CHORD BEARING OF S15°16'33"W AND A CHORD DISTANCE OF 8.00 FEET; THENCE N72°05'38"W PARALLEL WITH SAID SEAWALL FOR 15.00 FEET; THENCE N15°10'48"E FOR 8.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 120 SQUARE FEET, MORE OR LESS.

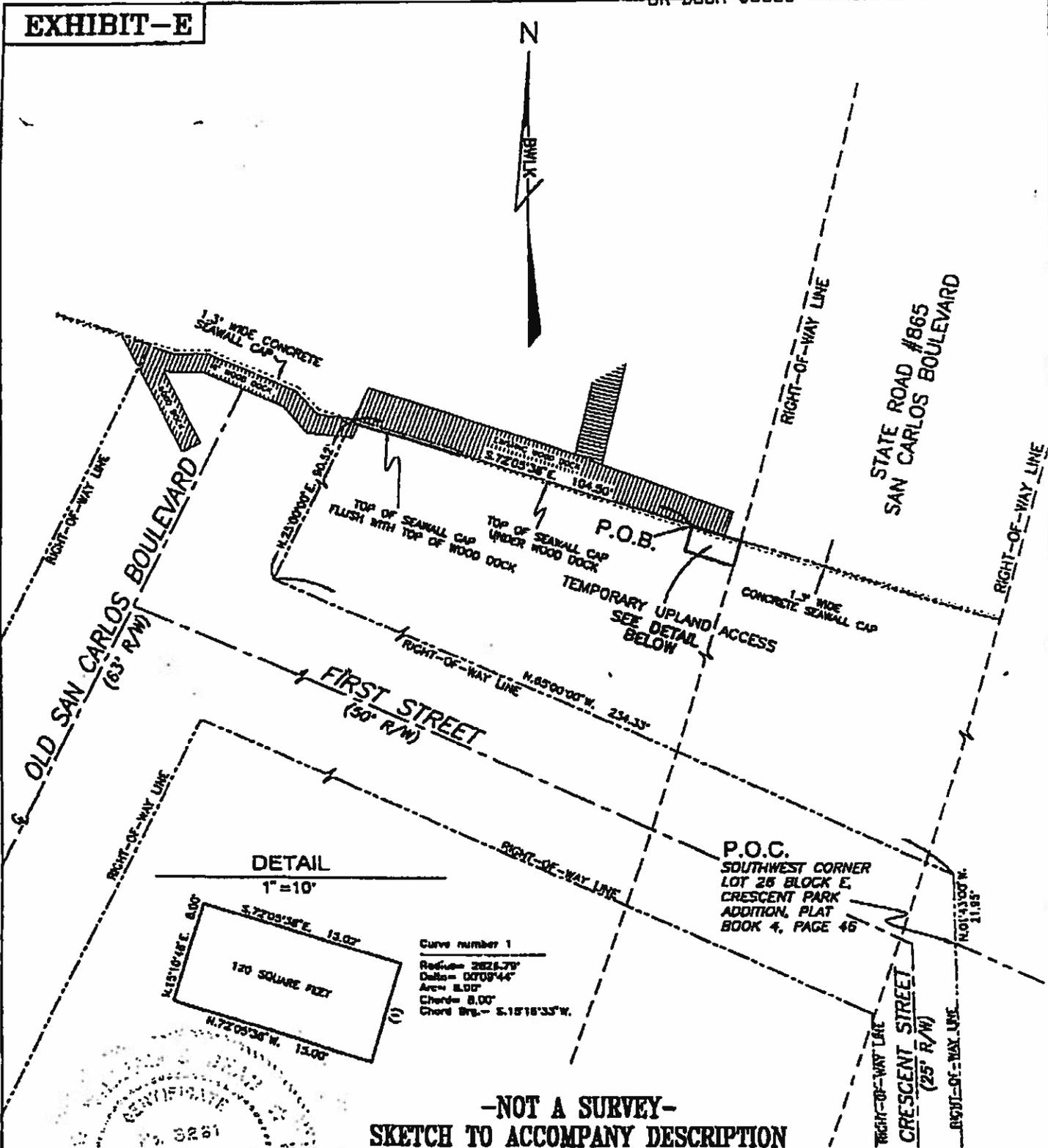
BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEARING N25°00'00"E.

SAID PARCEL SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY.

33328DESC5

6/7/02

EXHIBIT-E



**-NOT A SURVEY-
SKETCH TO ACCOMPANY DESCRIPTION**

*** THIS IS NOT A SURVEY ***
 Bean, Whitaker, Lutz & Karih, Inc.

 WILLIAM E. BEAN P.L.M.
 Florida Certification No. 3261

Bean, Whitaker, Lutz & Karih, Inc. (LB4910)					
CONSULTING ENGINEERS AND SURVEYORS					
13041 MCCREDDOR BOULEVARD-SUITE 1, FORT MYERS, FLORIDA 33910-5610 (841) 481-1331					
SK33328.DWG					
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
6/07/02	33328	W.F.	1" = 40'	3 OF 2	24-46-23

EXHIBIT

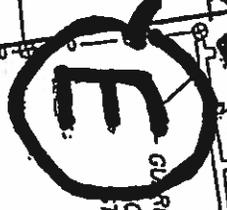


TOP OF SEAWALL
FLUSH WITH TOP
OF WOOD DOCK

TOP OF SEAWALL
UNDER WOOD DOCK

WOOD DOCK

SEAWALL



GR
RORAIL
CONCRETE
STEPS

12'X14' AREA FOR
DUMPSTER W/6' HIGH
SCREENED ENCLOSURE

FMB
PEDESTRIAN
PLAZA

CONSTRUCT
6'X8' CONCRETE PAD

RAMP, SEE
ARCHITECTURAL PLANS

EXISTING
CHAIN
CONNECTING
EXISTING
POSTS

R15'

OVERHEAD BRIDGE OUTLINE
(NOT SHOWN)

RESTAURANT COURTYARD
RESTAURANT SEATING, SEE
ARCHITECTURAL PLANS

119.52'(C)
120.4'(D)
SOUTHEASTERLY

EXISTING
EDGE OF
PAVEMENT

EXISTING
ASPHALT

N25°00'00"E 90.52'(C) 89.5' (D)

CONCRETE SIDEWALK
(TO REMAIN)

REFERENCE POINT
771582.4270 N.
671070.5500 E.

PROPOSED TWO STORY
WATERFRONT RESTAURANT
4.5' CONCRETE SIDEWALK
(TO BE REMOVED TO THIS POINT)

CONSTRUCT
5' WIDE PLANTING AREA
W/ 8" TYPE "D" CURB

REPLACE WITH PAVEMENT

N65°00'00"W 134.76'(C) 135.02'(D)

3' CONCRETE VALLEY GUTTER

FIRST STREET

(PUBLIC LOCAL ROAD, 50' R.O.W.)

EXISTING
EDGE
OF
PAVEMENT

50'
R.O.W.

R.O.W.

RS'

10

9

8

7

6

5

4

3

2

1

2

DIRECTORS ACTION
BY UNANIMOUS CONSENT
WITHOUT A MEETING
OF

KIRIC INVESTMENTS, INC.

The undersigned, presently being the members of the Board of Directors of Kiric Investments, Inc. ("Corporation") who would be entitled to vote upon the actions hereinafter set forth at a formal special meeting of the Board of Directors of said Corporation, do hereby consent to the following actions to the same extent, and to have the same force and effect as if adopted at a formal special meeting of the Board of Directors of said Corporation:

1. RESOLVED, that all actions, transactions, and activities of the Directors and Officers of the Corporation from the date of their last meeting to the date hereof are hereby approved, ratified, and confirmed.
2. FURTHER RESOLVED, that the Non-Exclusive Pedestrian Access Agreement by and between Kiric Investments, Inc., as Grantor, and the Town of Fort Myers Beach, Florida, as Grantee, a copy of which is attached hereto as Exhibit A (the "Agreement") is hereby approved.
3. FURTHER RESOLVED, that G. Edward Cusick, as Vice President of the Corporation, is hereby authorized and directed to execute the Agreement on behalf of the Corporation and to take such further action and to execute such further documents or instruments as may be required to effect the terms of such Agreement.

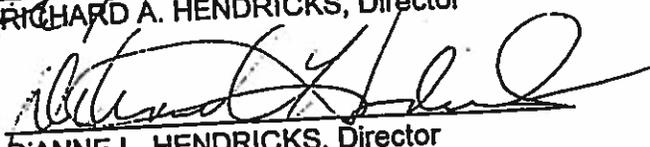
The undersigned do hereby unanimously consent and affirm that the actions set forth in the foregoing resolutions shall have the same force and effect as if taken at a duly constituted meeting of the Board of Directors of the Corporation and that this document be filed with the Secretary of the Corporation and shall be made a part of the minutes of the Corporation.

This consent action may be executed in any number of counterparts, each of which shall be deemed an original instrument, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart. Facsimile copies of executed documents shall be deemed originals for all purposes.

Dated: 4/19/, 2002

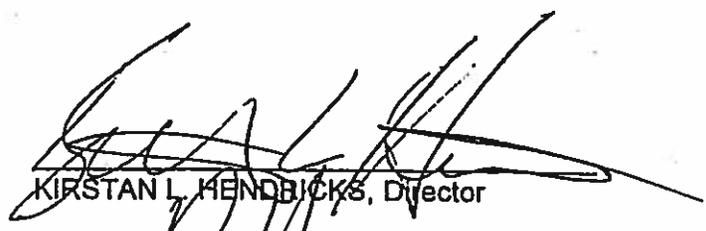
Dated: 4/20/02, 2002


RICHARD A. HENDRICKS, Director

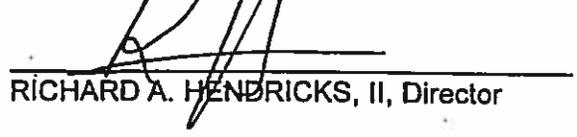

DIANNE L. HENDRICKS, Director

Dated: 4/17/02, 2002

Dated: 4/17/02, 2002



KIRSTAN L. HENDRICKS, Director



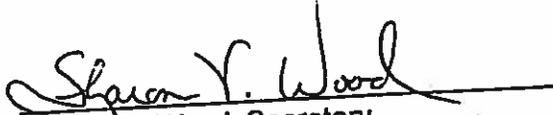
RICHARD A. HENDRICKS, II, Director

CERTIFICATE OF THE SECRETARY

The undersigned, Sharon V. Wood, Secretary of Kiric Investments, Inc., a Florida corporation (the "Corporation"), hereby certifies that the resolutions attached hereto as Exhibit A are a true, correct and complete copy of certain resolutions duly adopted by the Board of Directors of the Corporation by written consent on the 11th day of April, 2002, and that said resolutions have not been modified or rescinded since their adoption and are in full force and effect as of the date hereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of said Corporation this 11th day of April, 2002.

(Corporate Seal)


Sharon V. Wood, Secretary

NON-EXCLUSIVE
PEDESTRIAN ACCESS AGREEMENT

THIS Pedestrian Access Agreement is made this ____ day of _____, 2002, between Kiric Investments, Inc., a Florida corporation, as Grantor, and the Town of Fort Myers Beach, Florida, a municipal corporation, Grantee.

WHEREAS, Grantor is the fee simple owner of the real property located in Lee County, Florida more particularly described in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, Grantor has entered into a Sovereignty Submerged Land Lease No. 360421085 with the Trustees of the Internal Improvement Trust Fund of the State of Florida (the "Submerged Land Lease") for submerged lands adjacent to the Property; and

WHEREAS, Grantor has constructed a dock over the leased submerged lands as shown on Exhibit "B" attached hereto; and

WHEREAS, in consideration of the approval of variances as requested in Case Number VAR 2001-00053 by the Town of Fort Myers Beach, Florida for the development of improvements on the Property, the Grantor has agreed to provide for public pedestrian access across a portion of the Dock for the purpose of affording pedestrian access connecting Old San Carlos with State Road 865 (right-of-way under Sky Bridge) in the location as shown on Exhibit "C" (the "Dock") attached hereto.

NOW, THEREFORE, in consideration of the above and foregoing and the mutual covenants hereinafter set forth, the Grantor and Grantee agree as follows:



1. Grantor hereby grants to Grantee a non-exclusive right of pedestrian access across the Dock.

2. Grantee's rights of access to the Dock shall be subject to and conditioned upon all terms and conditions of the Submerged Land Lease. This access shall be irrevocable except:

a. upon mutual consent of the parties hereto; or

b. if the Grantor determines, in his sole discretion, that an imminent threat to public health, safety or welfare exists, including, but not limited to, damage or disrepair to the Dock which creates a hazardous condition. In this event, the Grantee shall be notified no later than 48 hours after Grantor has closed the Dock. The Grantor shall take all reasonable action necessary to reopen the Dock as soon as possible.

3. Grantor shall maintain the Submerged Land Lease or any amendments thereto in good standing, including all lease payments due the State of Florida thereunder and shall timely apply for renewals prior to the termination of each term of said Submerged Land Lease.

4. Grantee's use of the property shall be subject to all existing and future easements, agreements, licenses, covenants and conditions, governmental or private, affecting the property but in no event, shall any use be made of this area that would be contrary to its continued public use as a pedestrian access from Old San Carlos Boulevard to State Road 865 (right-of-way under Sky Bridge).

5. Grantor agrees that Grantee shall have reasonable access over and across that portion of the Dock described in Exhibit "C", except that Grantor reserves the right to construct and/or place such things on the Dock, including, but not limited to, dock boxes, utility pedestals, pump out stations, cleats, ladders and other items commonly associated with the ordinary and customary use of a dock, but in no event shall the placement of these structures on the Dock prevent, inhibit or impair pedestrian access across the Dock described in Exhibit "C".

6. In the event of a catastrophic occurrence which causes damage to that portion of the Dock described in Exhibit "C", to the extent that the Dock becomes unuseable or unsafe for pedestrian access, then Grantor agrees to provide comparable upland access on and over Grantor's upland property to Grantee for the period of time necessary to repair the Dock. Subsequent to completion of the necessary Dock repair, the right to upland access by Grantee shall cease.

7. Grantor agrees to provide Grantee temporary access to the upland areas described in attached Exhibits "D" and "E". The temporary access to the upland area delineated in Exhibit "D" shall be valid for a reasonable period of time during which Grantee agrees to diligently pursue a submerged land lease for dock construction and to timely construct said dock in the area located directly west of the current terminus of the Dock described in Exhibit "C".

The temporary access to the upland area delineated in Exhibit "E" shall be valid until such time as Grantor extends the Dock described in Exhibit "C" in an easterly direction to Grantor's eastern riparian property line and Grantee obtains a submerged land

lease for Dock construction and constructs an extension to Grantor's dock in the area located immediately east of the pedestrian access area described in Exhibit "C". Grantor and Grantee agree to diligently pursue all necessary permitting and construction of said Dock extensions.

8. Grantor agrees to reasonably maintain the Dock for the duration of either this Agreement or the Submerged Land Lease, whichever is shorter.

9. Grantee's use of the property shall be between the hours of 8:00 A.M. to midnight, Monday through Sunday and shall be so posted.

10. This Agreement shall terminate only upon the termination of the Submerged Land Lease by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida or upon impossibility of performance by the Grantor.

11. Grantor agrees to hold Grantee harmless from and against any loss or damage to persons or property resulting from a negligent act or omission by Grantor, its agents or assigns concerning actions and obligations of Grantor as set forth in this Agreement.

12. Grantor agrees to name Grantee as an additional insured on its insurance liability policy with respect to pedestrian usage of the Dock pursuant to this Agreement.

13. This Agreement shall be recorded in the Public Records of Lee County, Florida.

14. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee's successors and/or assigns.

15. Grantee shall have the right of specific performance to enforce the terms of this Agreement.

16. Any modification of this Agreement shall be binding only if evidenced in writing, signed by each party.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be signed as of the dates below indicated.

Signed Sealed and Delivered
in the presence of:

WITNESSES:

GRANTOR:

KIRIC INVESTMENTS, INC., a Florida corporation

By: _____
G. Edward Cusick, Vice President

Attest:

GRANTEE:

TOWN OF FORT MYERS BEACH, FLORIDA,
a municipal corporation

City Clerk

By: _____
Daniel L. Hughes, Mayor

APPROVED AS TO FORM:

Marsha Segal-George, Esq.
Acting Town Attorney

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by G. Edward Cusick, as Vice President of Kiric Investments, Inc., a Florida corporation. He is personally known to me or has produced _____ as identification.

Notary Public

Printed Name: _____

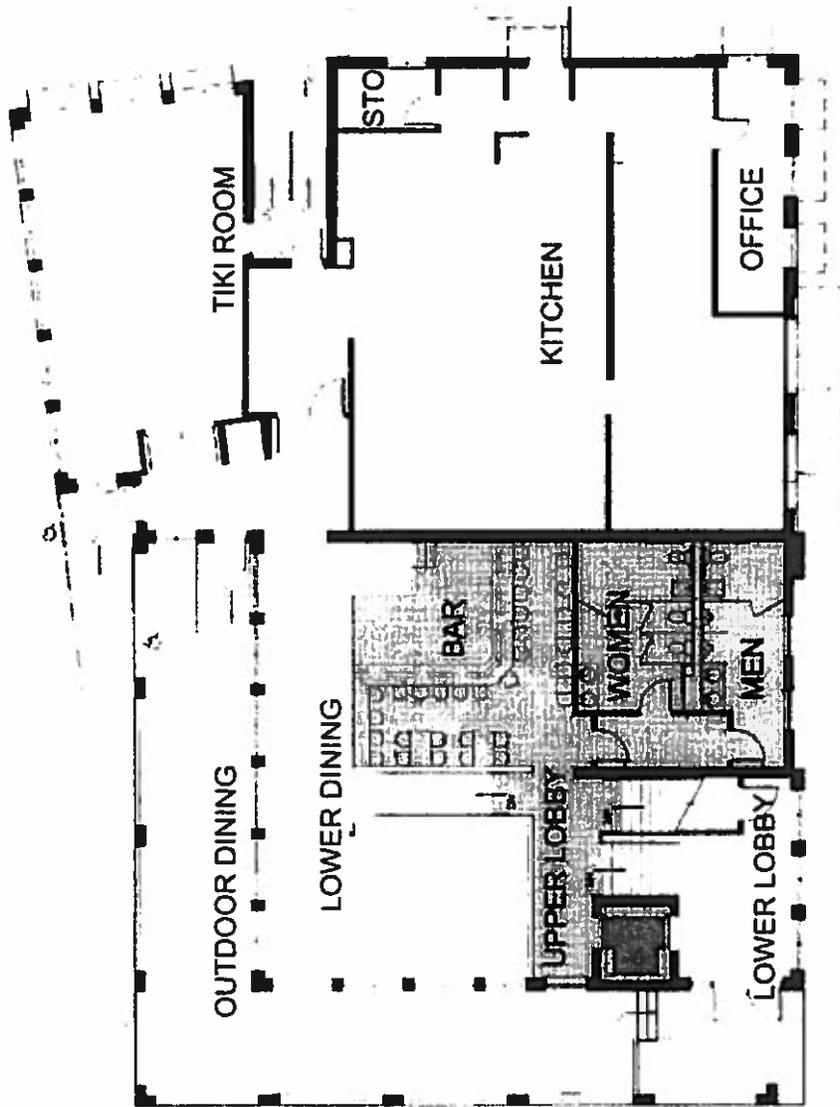
My Commission Expires: _____



SNUG HARBOR RESTAURANT

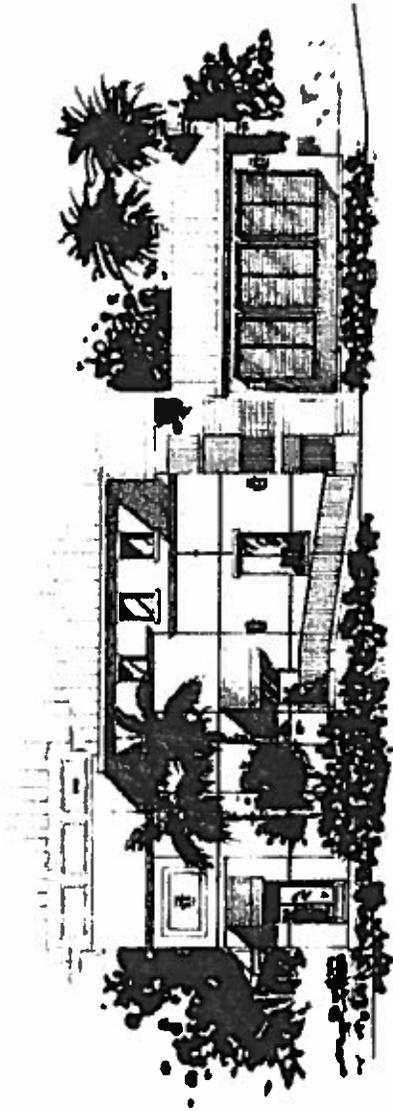
1000 W. WILSON BLVD. SUITE 100
DALLAS, TEXAS 75201

EXHIBIT "C"

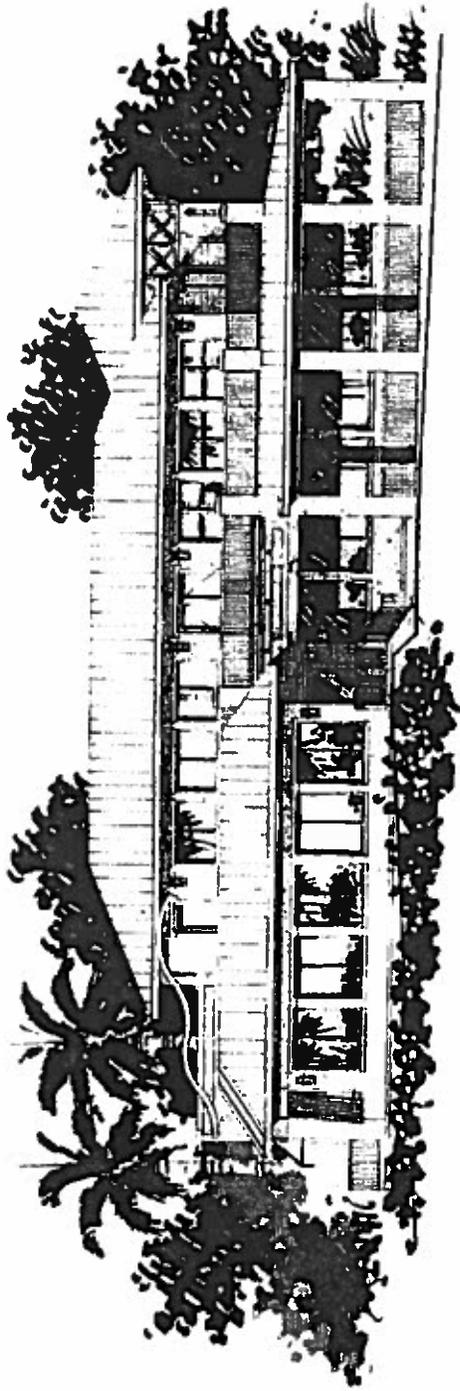


Scale: 1/4" = 1'-0"
1" = 12'-0"

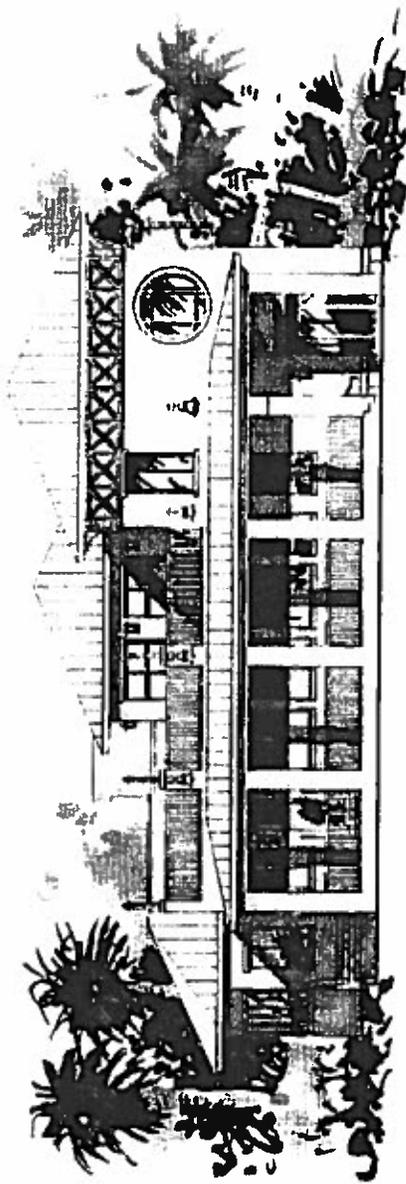
2-1



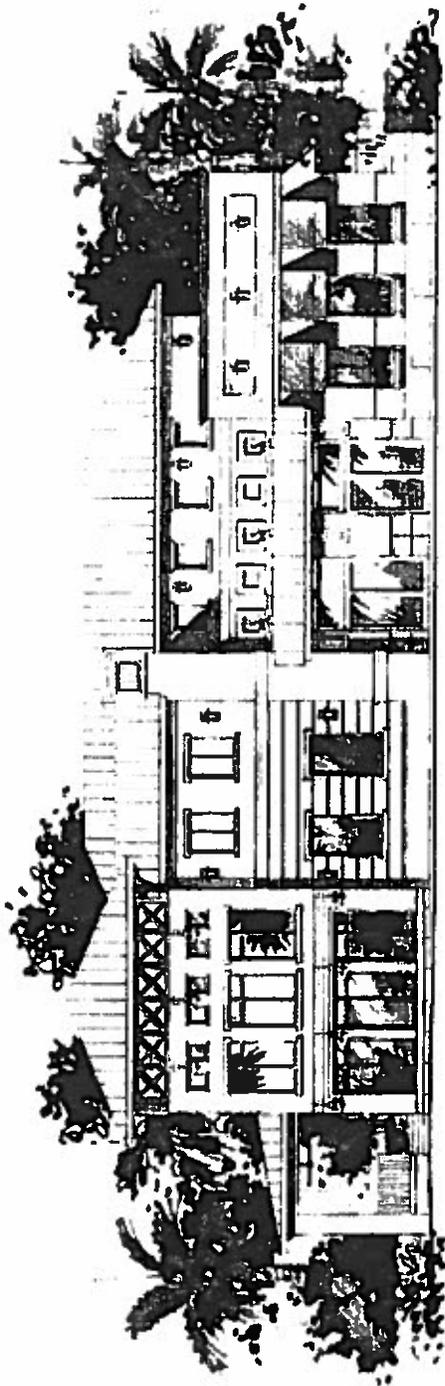
62



42



25



116

EXHIBIT "E"

Prior to approved construction over an existing or future public sidewalk, the Developer shall indemnify and hold the Town harmless from any and all claims of injury to persons or property alleged to be caused by said construction and activities related to it and from any and all similar claims alleged to have resulted from objects thrown, dropped, or falling from said buildings, including part of the building itself, during its construction.

- a) Prior to issuance of any permits allowing such construction, the Developer shall provide the Town with written proof of liability insurance coverage showing the Town as one of the named insureds thereunder with coverages of not less than \$6,000,000 combined single limit, with \$1,000,000 per occurrence and \$5,000,000 umbrella coverage.
- b) This insurance coverage shall remain in force until the construction has been certified as being complete, and the Developer shall provide the Town with written proof of same within thirty (30) calendar days of the annual renewal date therefor.
- c) The promise to indemnify and hold the Town harmless shall run with title to the property for so long as the building encroaches over the public sidewalk.
- d) The Town in return shall record an instrument consenting to and providing an easement for the encroachment of the building over the public sidewalk for the duration of the encroachment's existence.

Attachment F

ORDINANCE NO. 15-01

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 2, NOISE CONTROL; SHORT TITLE AND TERRITORIAL SCOPE; FINDINGS AND PURPOSE; DEFINITIONS; NOISE DISTURBANCE PROHIBITED; PROHIBITED ACTS; EXCEPTIONS; WAIVERS; ENFORCEMENT; PENALTIES; CIVIL REMEDIES; RULES AND REGULATIONS; CODIFICATION AND SCRIVENER'S ERRORS; CONFLICTS OF LAW, SEVERABILITY AND SUBSTITUTION CLAUSE; MODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council ("the Council") is the governing body in and for the Town of Fort Myers Beach, a municipal corporation in the State of Florida; and

WHEREAS Chapter 166, Florida Statutes, authorizes the Council, acting for the benefit of the Town, its residents and visitors, to adopt ordinances necessary for the exercise of its powers and to prescribe fines and penalties for the violation of said ordinances in accordance with general and local law; and

WHEREAS, the Council has determined a need to more effectively control and abate noise disturbances in the Town; and

WHEREAS, the purpose of this Ordinance is to amend the current regulations to provide a clear delineation of enforcement procedures and standards with concise guidelines for regulating noise disturbances within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

SECTION 1: AMENDMENTS

Chapter 14, Article II Noise Control, Sections 14-19 thru 14-24 are hereby deleted in their entirety and replaced as follows:

Sec. 14-19 - Short Title and Territorial Scope.

This Article will be known and cited as the "Fort Myers Beach Noise Control Ordinance" and will be applicable throughout the corporate limits of the Town of Fort Myers Beach.

Sec. 14-20 - Findings and Purpose.

- (a) The Town of Fort Myers Beach finds excessive, loud and raucous noise degrades the environment of the Town to a degree that:
- (1) Is harmful to the health, welfare, and safety of its inhabitants and visitors;
 - (2) interferes with the comfortable enjoyment of life and property;
 - (3) interferes with the well-being, tranquility, and privacy of the home; and
 - (4) can cause and aggravate health problems.
- (b) Both effective control and the elimination of excessive, loud and raucous noise are essential to the health, safety and welfare of the Town's residents and visitors, and to the conduct of normal pursuits of life, including, but not limited to, recreation, work, communication, and rest.
- (c) This Article is enacted to protect, preserve, and promote the health, safety, welfare, peace and quiet of the residents of through the reduction, control, and prevention of excessive, loud and raucous noises that unreasonably disturb, alarm, injure, or endanger the comfort, repose, health, peace, or safety of reasonable persons with normal sensitivities.
- (d) Nothing contained in this Article is intended to infringe upon the constitutionally protected rights guaranteed by Article I, Section 6 of the Florida Constitution and the First Amendment of the United States Constitution. This Article enacts narrowly drawn, content-neutral regulations that are to be interpreted so as to not unduly restrict constitutionally protected rights.

Sec. 14-21 - Findings and Purpose.

The words and phrases used in this Article are defined as follows:

A-weighted level (dBA): The sound pressure level in decibels as measured using the A-weighting network on a sound level meter. The unit of measurement is the dBA. Sound level meter settings shall be set for slow response.

Ambient noise: The all-encompassing noise associated with a given environment, being usually a composite of sound from many sources near and far.

C-weighted level (dBC): The sound pressure levels in decibels as measured using the C-weighted network on a sound level meter. The unit of measurement is the dBC. Sound level meter settings shall be set for slow response.

Commercial use: Land used primarily for the sale of merchandise or goods, the performance of a service, or for office or clerical work.

Continuous noise: A noise which remains essentially constant in level during the period of observation.

Council: The Fort Myers Beach Town Council.

Decibel (dB): A division of a logarithmic scale used to express the ratio of two (2) like quantities proportional to power or energy. The ratio is expressed in decibels by multiplying its common logarithm by 10.

Emergency: An occurrence or set of circumstances involving actual, threatened or imminent physical trauma or property damage which necessitates immediate action.

Emergency work: Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including restoration work to return property to a safe condition following an emergency.

Impulsive sound: A sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions and drop forge impacts.

Noise: Any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological effect on humans. "Noise" includes low frequency sounds caused by amplified bass music that can result in vibration of structures or persons.

Noise disturbance: One or a group of excessive, loud, harsh, raucous, harmonious or nonharmonious sounds or vibrations that unreasonably disturb, alarm,

injure, harm or endanger the health or welfare of a reasonable person with normal sensitivities.

Noise level: As referenced in this chapter, the noise level is the sound pressure level as measured in dBA unless otherwise specified. A measurement of noise must be at least five (5) dB above the ambient noise level.

Person: Any individual, natural person, public or private corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

Public space: Any real property or structure thereon normally accessible to the public which is owned or controlled by a governmental entity.

Pure tone: Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds arithmetic value of the sound pressure levels of the two (2) contiguous one-third octave bands by five (5) dB for center frequencies of 500 Hz and above and by eight (8) dB for center frequencies between 160 and 400 Hz and by fifteen (15) dB for center frequencies less than or equal to 125 Hz.

Real property line: An imaginary line including its vertical extension which separates the real property owned, rented or leased by one person from that owned, rented or leased by another person, excluding intra-building real property divisions except as otherwise provided herein.

Receiving land: Land area neighboring or in the vicinity of a sound source and on or at which the sound emanating from the sound source is audible to the normal ear and/or felt in the form of vibration.

Residential use: Land use that is primarily for living and sleeping, parks, hospitals, schools, institutional, nursing homes or the individual plots within a mobile home park or any land use that is not commercial.

RMS sound pressure: The square root of the time averaged square of the sound pressure, denoted P_{rms} .

Lee County Sheriff's Office: The designated authority charged with administration and enforcement of the Fort Myers Beach Noise Control Ordinance.

Sound level: The weighted sound pressure level obtained by the use of a metering characteristic and weighting A, B, or C as specified in the American National

Standards Institute specifications for sound level meters ANSI S1.4-1983, or successor publications. If weighting employed is not indicated, the A-weighting shall apply.

Sound level meter: An instrument to measure the sound pressure level of relatively continuous and broadband noises. The sound level meter used to determine compliance with this chapter shall meet or exceed the requirements for type 2 sound level meter in accordance with American National Standards Institute (ANSI) Standard S1.4-1983 or its successor publication.

Sound pressure level: Twenty (20) times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micropascals ($20 \times 10^{-6} \text{ N/m}^2$). The sound pressure level is denoted L_p or SPL and is expressed in decibels.

Sound source: The location from which the impermissible sound level or noise disturbance is emanating.

Sec. 14-22 – Noise Disturbance Prohibited.

No person shall make, continue or cause to be made or continued any noise disturbance in accordance with the terms set forth in this Article.

Sec. 14-23 - Prohibited Acts.

The occurrence of the conditions, acts or omissions as described in either subsection (a) or (b) of this section shall constitute a violation of this Article. Should a sound level measurement method be unavailable, inappropriate for a given set of circumstances, or unable to be taken by a sound level meter, subsection (a) of this section may be used to prove a violation so long as evidence exists sufficient to establish that the sound constitutes a noise disturbance pursuant to the standards provided in subsection (b) of this section.

(a) *Maximum permissible sound levels by receiving land.* No person shall operate or cause to be operated any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 1 when measured at or within the real property line of the receiving land or, at the discretion of the Officer, those limits set forth in the alternative Table 2 as measured from the property line of the noise source.

**Table 1
SOUND LEVELS BY RECEIVING LAND USE**

Land Use Category	Time	Sound Level Limit dBA
Residential or public space	7:00 a.m.—10:00 p.m.	66
	10:00 p.m.— 7:00 a.m.	55
Commercial or business	7:00 a.m.—10:00 p.m.	72
	10:00 p.m.— 7:00 a.m.	65

**Table 2
ALTERNATIVE SOUND LEVELS**

Land Use Category	Time	Sound Level Limit dBA
All land uses	7:00 a.m. to 10:00 p.m.	75
	10:00 p.m. to 7:00 a.m.	72

(1) Correction for character of sound:

- a. For any source of sound which emits a pure tone, the maximum sound level limits set forth in Table 1 or 2 shall be reduced by five (5) dBA.
- b. For any source of impulsive sound which is of short duration with an abrupt onset, the maximum sound level limits set forth in Table 1 or 2 shall be increased by ten (10) dBA from 7:00 a.m. to 10:00 p.m.
- c. Alternate Weighting. A C-weighted level (dBC) may be substituted for any sound level limit identified in this Article under an A-weighted level (dBA). Such substitution shall carry a plus five (5) dB adjustment (i.e. a 55 dBA limit shall be substituted with a 60 dBC limit).

(2) *Establishment of use.* In instances where a commercial use was established prior to and in an area away from a residential use and encroachment of the residential use has occurred resulting in the commercial use adjoining the residential use, the sound level limit for the receiving residential use will be that of the commercial use, whichever applicable, as set forth in Table 1 or 2 above. Establishment of the commercial uses' existence before residential use encroachment is an affirmative defense to a violation of this Article.

(3) *Specific restrictions.* In addition to the general limits set out above in Table 1 or 2, the following specific acts are declared to be in violation of this Article:

- a. *Multifamily dwellings.* In the case of multifamily dwelling units, it shall be unlawful to create or permit to be created any noise that exceeds fifty (50) dBA during the hours between 7:00 a.m. to 10:00 p.m. or forty-five (45) dBA during the hours between 10:00 p.m. and 7:00 a.m. daily, as measured from the receiving dwelling unit within such multifamily dwelling.
- b. *Construction or demolition noise.* No person shall operate or permit to be operated any power-driven construction equipment without a muffler or other noise-reduction device at least as effective as that recommended by the manufacturer or provided as original equipment unless the sound level emitted by the equipment is less than the sound level limit for the applicable land use category set forth in Table 1 or 2 of this section, as measured from at or within the real property line of the receiving land.
 1. The construction, erection, demolition, alteration, or repair of any building or structure, or any excavation, within or adjacent to any residential area, is prohibited before 7:00 a.m. or after 7:00 p.m. Monday through Saturday, and is prohibited at any time on Sundays or legal holidays.
 2. Construction equipment that must be operated near a residential use on a 24-hour-per-day basis (i.e., pumps, well tips, generators, etc.) will be shielded by a barrier to reduce the noise during the hours of 6:00 p.m. to 7:00 a.m. unless the unshielded noise level is less than fifty-five (55) dBA, as measured from at or within the real property line of any residential receiving land.
 3. This section does not apply to routine household maintenance and the use of domestic power tools in connection with such routine household maintenance.

4. This section also does not apply to work performed by a public service utility, or other contractor approved by the Town, to address or prevent a public emergency, including traffic control, is exempt from the provisions of this section.

- c. Screeching of tires, and engine or jake braking.
 - 1. The operation of any motor vehicle in such a way as to cause the tires thereof to screech, except where the same is necessarily caused in an emergency, as in an attempt by the operator to avoid an accident or the causing of damage or injury, shall be deemed a violation of this Article.
 - 2. The operation of jake brake or engine brake as means of reducing speed or as a means of slowing or stopping along public rights-of-ways as to cause loud, explosive noise, shall be deemed a violation of this Article.

(4) *Sound level measurement standards.* The following standards must be followed in measuring sound levels.

- a. *Calibration.* All sound level meters must be calibrated and serviced in accordance with the manufacturer's instructions.
- b. *Sound level meter operation.* The sound level meter must be operated in accordance with the manufacturer's instructions.
- c. *Measurement procedures.* The following procedure must be used to determine if a violation exists under this subsection:
 - 1. The sound level meter must be located within the boundary of the receiving land when taking the measurement.
 - 2. The sound level meter must be oriented toward the source of the sound making a direct line between the sound source and the sound level meter.
 - 3. The sound level meter must be set for either the A-weighted or C-weighted network and slow response.
 - 4. If possible, determine and record the ambient noise level during some point in the observation. The A-weighted or C-weighted ambient noise level, including wind effects and noises other than the sound source, must be at least 5 dbA lower than the sound level of the sound source for a violation of this Ordinance to exist.

(b) *Noise disturbance.* Notwithstanding any other provision herein, it shall be unlawful for any person to make, continue, cause, or permit any noise disturbance.

(1) *Standards.* The standards to be considered in determining whether a noise disturbance exists under this subsection include the following:

- a. The volume of the noise, whether it is loud or quiet.
- b. The intensity of the noise.
- c. Whether there is vibration associated with the noise.
- d. The nature of the noise, i.e. raucous, unruly, harsh, etc.
- e. The volume and intensity of the ambient noise, if any.
- f. The proximity of the noise to residential sleeping facilities.
- g. The nature and use of the area from which the noise source is located.
- h. The nature and use of the receiving land.
- i. The time of day or night the noise occurs.
- j. The duration of the noise.
- k. Whether the noise is produced by a commercial or noncommercial activity.
- l. Whether the noise falls under one of the listed exceptions pursuant to Section 14-24.

(2) *Consideration.* Enforcement under subsection (b) of this section requires consideration of all applicable standards listed in subsection (b)(1) and a determination as to whether or not a noise disturbance exists by the Sheriff's Office or other authorized enforcement personnel on the scene.

Sec. 14-24 - Exceptions.

The following will not be considered a violation of this Article:

- (a) The operation of warning or emergency signal devices such as sirens, horns and bells when utilized for their intended purpose in cases of emergency.
- (b) Noises resulting from equipment or operations incidental to the installation, maintenance or repair of facilities or restoration of services, such as public utilities or other emergency work in the public interest.
- (c) Operation of equipment or conduct of activities normal to residential communities, such as lawn care, soil cultivation, domestic power tools, lawn mowers, maintenance of trees, hedges, gardens, saws and tractors, street sweepers, mosquito fogging, tree trimming, and limb clipping and other normal community operations, is allowed

between the hours of 7:00 a.m. to 7:00 p.m., provided that the equipment is in accord with the manufacturer's specifications and with all manufacturer's sound reducing equipment in use and in proper operating condition. Operation of equipment for solid waste and recycling collection in or adjacent to residential uses between the hours of 6:30 a.m. to 6:00 p.m., and operation of equipment for solid waste and recycling collection in nonresidential locations between the hours of 4:00 a.m. to 10:00 p.m. Golf courses may obtain a waiver pursuant to the permit process found in Section 14-25.

- (d) Noise resulting from safety features required by law for equipment or operations, including, but not limited to, backup alarms or vehicle motion alarms.
- (e) Noises resulting from a special event authorized pursuant to Chapter 22 of the Code provided such noises are in compliance with any specific limitations as set forth within the special event permit. If no specific limitations are set forth in the special event permit, the provisions of this Article shall fully apply.

Sec. 14-25- Waivers.

- (a) Applications for a waiver for relief from the maximum allowable noise level limits designated in this Article shall be made in writing. Such applications for waivers will be made to the Town Manager or the Town Council when the activity creating such noise is located within the Town's corporate boundaries. Any waiver granted by the Town Manager or the Town Council must be provided to the applicant in writing within thirty (30) days of application to the Town and contain all conditions required for compliance with the waiver approval. The Town Manager or the Town Council may grant the waiver under the following conditions:
 - (1) The Town Manager in granting a waiver may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.
 - (2) Waivers may be issued for no longer than one hundred eighty (180) days, renewable by further application to the Town Manager or the Town Council.
- (b) Any party aggrieved by the Town Manager's decision under this section, may appeal to Town Council within thirty (30) days from the date of written decision on the waiver.

Sec. 14-26 - Enforcement.

The Town's Code Enforcement Officers and the Lee County Sheriff's Office is empowered to investigate any situation where a person is alleged to be violating this Article. If an Officer encounters a circumstance which reasonably indicates that a person is violating this Article, the Officer will conduct either a sound level measurement test or noise disturbance determination in accordance with this Article to determine whether or not a violation exists. Nothing in this Article shall prohibit the Lee County Sheriff's Office from charging persons responsible for acts which affect the peace and quiet of persons who may witness them for breach of the peace or disorderly conduct under Section 877.03, Florida Statutes, as may be amended from time to time.

Sec. 14-27 - Penalties.

Any person or persons, firm or corporation or any agent thereof who violates any of the provision of this Article will, upon conviction, be guilty of a second degree misdemeanor and subject to a fine not exceeding the sum of Five Hundred Dollars (\$500.00) or imprisonment in the County jail for a period not exceeding sixty (60) days, or both. Each separate occurrence of a violation will constitute a separate offence and will be punishable as such.

Sec. 14-28 - Civil Remedies.

In addition to the penalties provided in Sec. 14-27, the Town Manager is hereby authorized to institute any appropriate action or proceeding including suit for injunctive relief in order to prevent or abate violations of this Article.

Sec. 14-29 - Rules and Regulation.

The Council is authorized and empowered to adopt and promulgate, by administrative code, such reasonable rules and regulations as may be necessary to carry out and enforce the purposes of this Article.

SECTION 2: CODIFICATION AND SCRIVENER'S ERRORS

The Town Council intends that this Ordinance be made part of the Code of Ordinances, Town of Fort Myers Beach, Florida; and that sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the Town Manager without the need for a public hearing.

SECTION 3: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION 4: SEVERABILITY AND SUBSTITUTION CLAUSE

Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Substitution of Message. It is not the intent of this Ordinance to afford greater protection to commercial speech than to noncommercial speech. Any sound allowed under this Code may contain, in lieu of any other sound, any otherwise lawful noncommercial message that complies with all other requirements of this ordinance. The sound may be emitted from commercial to noncommercial speech, or from one noncommercial message to another, as frequently as desired, provided the sound continues to comply with all requirements of this Code.

SECTION 5: MODIFICATION

It is the intent of the Council that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications will be incorporated into the final version of this Ordinance.

SECTION 6: EFFECTIVE DATE

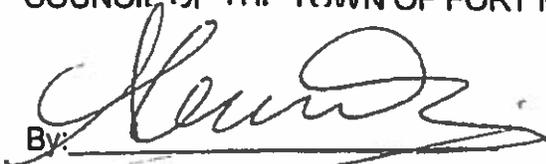
This Ordinance shall take effect immediately upon adoption by the Town Council.

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The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Hosafros and seconded by Council Member Stockton and upon being put to a roll call vote, the result was as follows:

Anita Cereceda, Mayor	aye	Dan Andre, Vice Mayor	nay
Alan Mandel	nay	Rexann Hosafros	aye
Summer Stockton	aye		

DULY PASSED AND ADOPTED THIS 15TH DAY OF JUNE 2015, BY THE TOWN COUNCIL, OF THE TOWN OF FORT MYERS BEACH.

By: 
Anita T. Cereceda, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency

By: 
Derek Rooney, Town Attorney