

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-29

WHEREAS, Applicant Thomas F. Kolar ("Applicant") has requested a Special Exception for the Yucatan Beach Stand to be located at 250 Old San Carlos Boulevard, Fort Myers Beach, Florida ("subject property") to permit a 4-COP liquor license in conjunction with a restaurant use that is located within 500 feet of a park, dwelling units under separate ownership, and other establishments primarily engaged in the sale of alcoholic beverages for consumption on premises, and that does not meet the requirements to qualify for the restaurant exception to the location standards of Land Development Code (LDC) section 34-1264(b); and

WHEREAS, Applicant has indicated the subject property's current STRAP number is 24-46-23-W3-00204.0010. The legal description of the subject property is attached hereto as Exhibit "A" and incorporated herein by reference, and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on June 19, 2007, at which time the LPA recommended that the Town Council **approve** the Applicant's request, subject to various conditions as set forth more fully in the LPA Resolution 2007-12; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council of the Town of Fort Myers Beach on August 13, 2007 and at the hearing, the Town Council gave full and complete consideration to the recommendations of the LPA, the record adduced before the LPA, the recommendations of staff, related documents, the request of Applicant and the testimony of Applicant, staff, and other interested persons as required by the Town of Fort Myers Beach Land Development Code Section 34-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

Based upon presentations by Applicant, staff, and other interested persons at hearing, review of the application, and the standards for granting special exceptions, the Town Council hereby **APPROVES** Applicant's request for a special exception to permit a 4-COP liquor license in conjunction with the subject property located within 500 feet of a park, dwelling units, and other establishments primarily engaged in the sale of alcoholic beverages for consumption on premises, with such approval subject to the following conditions:

CONDITIONS OF APPROVAL:

1. Outdoor music or similar entertainment is prohibited. Indoor music and/or similar entertainment is restricted to occur only within the enclosed walls and further restricted to the following hours: 11:00 AM to 11:00 PM from Monday through Thursday; 11:00 AM through 10 PM on Sunday; and 11 AM through Midnight on Friday and Saturday. Live music must be limited to non-amplified music. A copy of the seating plan is attached hereto as Exhibit "B" and hereby incorporated by reference.

2. The Special Exception is limited to on-premises consumption of alcoholic beverages in a 4500 square-foot area encompassing the indoor areas, roofed patio/deck area, and walk-in coolers as shown on the site plan, which is attached to this Resolution as Exhibit "C" and hereby incorporated by reference.

3. The Special Exception is limited to a 4COP license for on-premises consumption of alcoholic beverages. The sale of alcoholic beverages on the subject property must comply with the provisions of LDC Section 34-1264(k) concerning sale of alcoholic beverages in restaurants. The terms and conditions of this approval as set forth in this Resolution shall be deemed to equally apply should the applicant cease operation of a 4COP and operate under the terms of an SRX series license as defined by Florida law.

4. The hours of operation during which alcoholic beverages may be served on-premises are limited to Monday through Thursday between the hours of 11:00 AM and 12:00 midnight; between 11:00 AM and 1 AM on Friday and Saturday; and between 11:00 AM and 10 PM on Sunday.

5. A full menu of food, encompassing full-course meals, must be available and offered to indoor and outdoor seating during hours of operation for consumption on premises. The sale of alcoholic beverages must be incidental to the sale of food.

6. Gross revenues from sale of food and non-alcoholic beverages must not fall below 51% of total sales over any 12-month period, or over the period during which the business has been in operation if the business has not been in operation for 12 months or more. If sale of alcoholic beverages exceeds 49% of total sales, this approval will become null and void. The Town Manager may require an audit of the records of the business to verify compliance, with the audit at applicant's sole cost and to be conducted by an independent auditor of the Town's selection in the Town's sole judgment.

7. The business must be in full compliance at all times with applicable provisions of state beverage law for the series of beverage license it holds.

8. The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles found in LDC Chapter 14, Article II.

9. This resolution does not grant consent for an awning or overhang proposed in the site plan to be constructed over the public right-of-way. The Town Council must address this matter separately.

10. Condition #9 above does not grant the owner or successor in interest undeniable right to development order approval.

FINDINGS AND CONCLUSIONS

In accordance with the requirements of Sections 34-84 and 34-88 of the LDC regarding consideration of eligibility for a Special Exception, the Town Council makes the following findings and reach the following conclusions:

1. Changed or changing conditions exist that make the requested approval, as conditioned, appropriate.

Comprehensive Plan (Comp Plan) policy 3-D-1 envisions “revitalizing downtown as a lively, inviting, comfortable, and safe public environment.” In keeping with this policy, improvements including spacious sidewalks and a pedestrian plaza at the north end of Old San Carlos Boulevard, have contributed to the pedestrian-friendliness of this area. The Town Council **does** find that these changes make approval of the requested Special Exception appropriate, as conditioned.

2. The requested special exception, as conditioned:

a) **Is** consistent with the goals, objectives, policies and intent of The Town of Fort Myers Beach Comprehensive Plan; and

The subject property is in the Pedestrian Commercial FLUM category, on Old San Carlos Boulevard. Comp Plan Policy 4-B-6, regarding the Pedestrian Commercial district, states that commercial activities must contribute to the pedestrian-oriented public realm. The proposed restaurant/bar use with its partially enclosed, roofed dining area fronting on the sidewalk, **will** invite pedestrian patrons and contribute to the pedestrian-oriented character of Old San Carlos Boulevard. The Town Council finds that the request **is** consistent with the goals, objectives, policies, and intent of the Comp Plan.

b) **Will** protect, conserve, or preserve environmentally critical areas and natural resources; and

The immediate vicinity of the subject property is developed and is not designated by the Comp Plan as environmentally critical. No net change in impervious area is requested, and no environmental concerns appear to be directly implicated in this request for special exception. Through the development order and building permit process, the Applicant will be required to address the turtle protection lighting standards in condition #9 above.

c) **Does** meet or exceed all performance and locational standards set forth for the proposed use in Chapter 34 of the LDC; and

A restaurant is a use permitted by right in the Downtown zoning district. The applicant's site plan proposes 30 parking spaces. For 4500 square feet of total area of restaurant use, LDC Section 34-2020 requires 36 parking spaces. For 700 square feet of area within a restaurant used for a bar or cocktail lounge, LDC Section 34-2020 requires an additional 4 spaces, for a total of 40 required spaces for the requested use. In the Downtown zoning district, for properties fronting on Old San Carlos Boulevard, LDC Section 34-676(a)(1) reduces the required parking by 50%, thus requiring only 20 parking spaces for the requested restaurant/bar with COP. The parking proposed on the site plan meets this requirement.

The requested use requires a special exception because the outdoor seating area is within 500 feet of a park, dwelling units under separate ownership, and other establishments primarily engaged in the sale of alcoholic beverages for consumption on premises, but otherwise the Town Council

finds that all locational standards for alcoholic beverage service **will** be met according to the applicant's site plan.

- d) **Will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property and

The existing surrounding uses include parking lots, retail stores, lodging establishments, and restaurants, many of which hold 2COP or 4COP beverage licenses. Residential uses are separated from the subject property by hotels, retail stores, parking lots, and other restaurants. The Town Council finds that the requested use, as conditioned, **will** be compatible with existing or planned uses, and **will not** cause damage, hazard, nuisance, or other detriment to persons or property.

- e) **Will** be in compliance with all general zoning provisions and supplemental regulations pertaining to the use as set forth in the LDC:

With the recommended conditions, the Town Council finds that the requested use **will** meet the regulations of LDC chapter 34, Article IV, Division 5 regarding on-premises consumption of alcoholic beverages, **will** comply with the general zoning provisions applicable to the Downtown zoning district, and **will** comply with the other applicable general zoning provisions and supplemental regulations set forth in LDC Chapter 34.

The Town Council finds that Applicant **has** demonstrated that the requested Special Exception, as conditioned, complies with the standards of the LDC Section 34-88 and with:

- a) The Town of Fort Myers Beach Comprehensive Plan; and
- b) The requirements of the LDC, including but not limited to LDC Section 34-88; and
- c) Any other applicable town ordinances or codes.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Meador and seconded by Councilmember Shenko, and upon being put to a vote, the result was as follows:

Dennis C. Boback, Mayor	<u>aye</u>	Charles Meador, Jr.	<u>aye</u>
Larry Kiker, Vice Mayor	<u>nay</u>	William Shenko, Jr.	<u>aye</u>
Herb Acken	<u>aye</u>		

DULY PASSED AND ADOPTED THIS 13TH DAY OF AUGUST, 2007, BY THE

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: *Dennis C. Boback*
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

By: *Anne Dalton*
Anne Dalton, Esquire

ATTEST:

By: *Michelle D. Mayher*
Michelle D. Mayher, Town Clerk

Town Attorney

EXHIBIT "A"

Town of Fort Myers Beach

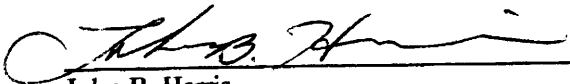
F M B SEZ 2007 0 0 0 0 1

DESCRIPTION: (Per Harris - Jorgensen, Inc.)

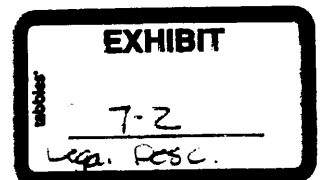
A tract or parcel of land lying in Blocks 4 and 5, and portions of a vacated alley lying between Blocks 4 and 5, and a portion of the South Half of vacated Fourth Street, all as shown on the Plat of Business Center, Section 24, Township 46 South, Range 23 East, Estero Island and recorded in Plat Book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

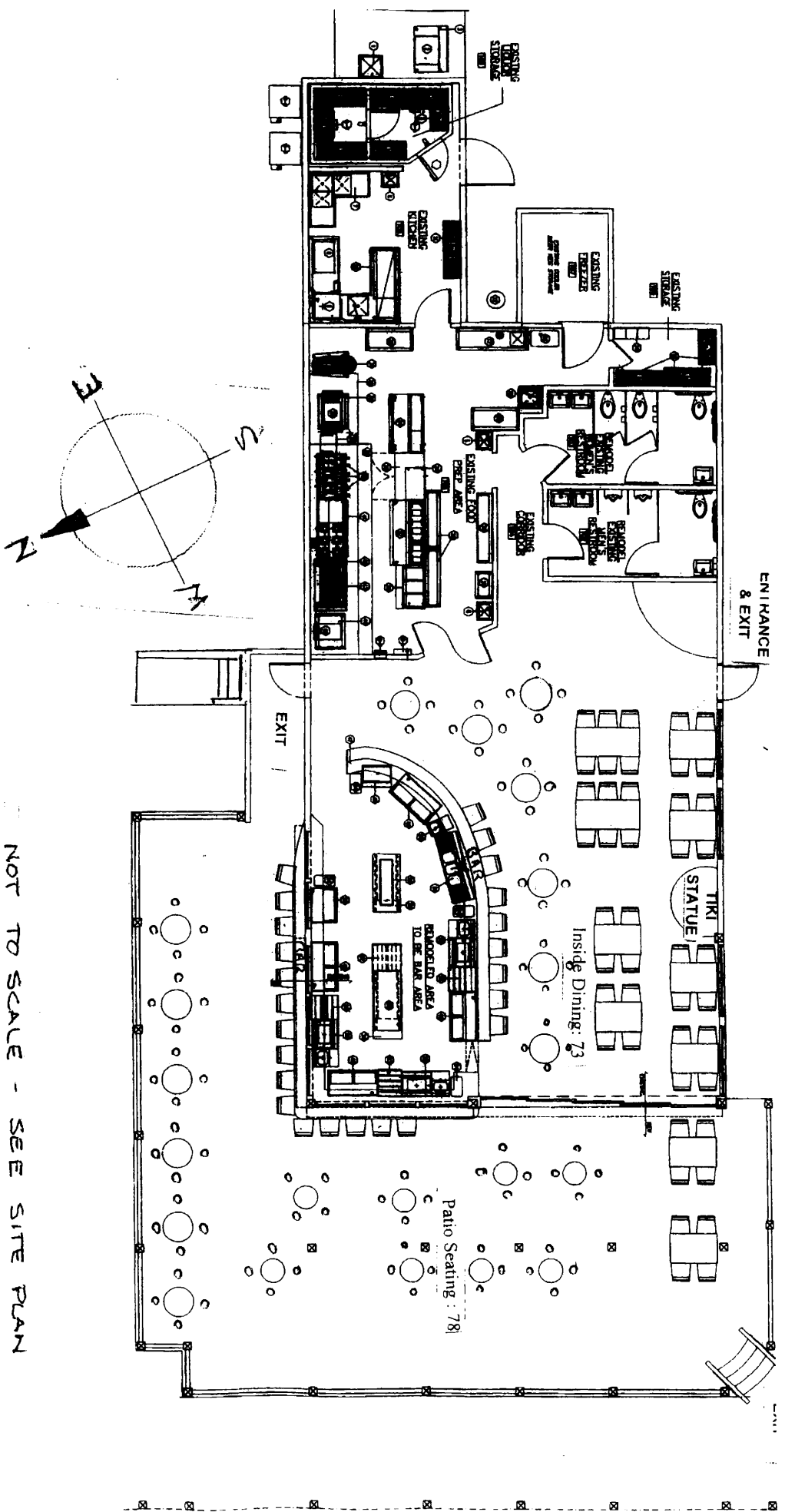
Beginning at the intersection of the centerline of the aforesaid Fourth Street and the Southeasterly right-of-way line of San Carlos Boulevard (66 feet wide); thence run S.64°00'09"E. along the centerline of said Fourth Street for 155.10 feet to a point of the Northwesterly line of SR 865 (85 feet wide);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

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



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





NOT TO SCALE - SEE SITE PLAN

EXHIBIT (B)

Town of Fort Myers Beach

F M B SEZ 2007 0 0 0 0 1