

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2010-06
FMBSEZ2010-0007 (Nemos on the Beach Resolution)

WHEREAS applicant Estero Beach Holdings, LLC ("applicant") has requested a special exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership, including an existing patio surfaced with paver blocks located landward of an existing retaining wall but within the EC zoning district, to include beer, wine and liquor; and

WHEREAS the subject property is located at 1154 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS the applicant has indicated that the STRAP for the subject property is 24-46-23-W3-000011.0000 and the legal description of the subject property is attached hereto as Exhibit "A" and hereby incorporated by reference; and

WHEREAS a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on June 8th, 2010; and

WHEREAS at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a special exception to permit consumption on premises of beer, wine and liquor in the DOWNTOWN zoning

RECOMMENDED CONDITIONS OF APPROVAL:

1. The area of the subject establishment used for consumption on premises must be confined entirely to the areas shown on the floor plan attached hereto and incorporated herein by reference as **Exhibit B**, including the interior of the first floor of the building, the front porch and the rear patio.

2. Music and other audible entertainment are prohibited before 10:00 am and after 10:00 pm each day in outdoor seating areas and must comply at all times with applicable ordinances.

3. Sales, service, and consumption of alcoholic beverages must not begin earlier than 7:00 AM and must end no later than 2:00 AM during each day.

4. The use must comply at all times with the provisions of LDC Section 34-1264(k), as may be amended from time to time, and must at all times be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509, Florida Statutes, and applicable state agency rules.

5. The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles provided in LDC chapter 14, article II.

6. The special permit approved by the Lee County Hearing Examiner in case # 95-07-162.02S is hereby declared null and void.

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

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

The location of the request was approved in 1995 for consumption of alcoholic beverages on the premises in conjunction with a restaurant, and the allowable seating areas were established through the appeal in 1007. The Comprehensive Plan and Land Development Code do not distinguish classes of restaurants that (in addition to non-alcoholic beverages and food) serve beer only, beer and wine only, or beer, wine, and liquor. The applicant's request does not implicate a change in use except insofar as the approved use was limited by special conditions attached to a prior special permit, subsequently modified by Town Council determination of an administrative appeal. The modifications to the allowable seating area through the 2007 appeal have made it possible for the establishment to obtain a special restaurant (SRX) series beverage license.

2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

The subject property is in the Pedestrian Commercial FLUM category on Estero Boulevard and other bars, hotels, restaurants and retail stores. Comp Plan **Policy 4-B-6**, regarding the Pedestrian Commercial FLUM, states that commercial activities must contribute to the pedestrian-oriented public realm. The beach and streets northward to Lynn Hall Park and southward to the Lani Kai are heavily traveled by pedestrian beachgoers. The existing restaurant is oriented toward this foot traffic, though it has essentially no parking area for patrons arriving by automobile. The outdoor seating areas are located on porches and patios separated by railings and elevation from the sidewalks and the beach.

3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.

A restaurant is a use permitted by right in the Downtown zoning district. Because dwelling units under separate ownership are located within 500 feet of the subject property, a special exception is necessary in order to allow an outdoor seating area. Performance and locational standards for the restaurant use were addressed through permitting for prior remodeling activities and through the 1995 variance as modified by the 2007 administrative appeal. There are no specific performance or locational standards in Town regulations for a restaurant with outdoor seating areas that serves beer, wine, and liquor, that differ from the standards that apply to a restaurant with outdoor seating that serves beer and wine only.

4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:

Construction of additional structures in environmentally critical areas has not been requested or permitted. The existing wood retaining wall is not proposed to be replaced or expanded. As conditioned, the use will be required to comply with current sea turtle protection standards.

5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property:

The existing surrounding uses include a hotel, a shopping center, bars and restaurants, and a few dwelling units. Within the Pedestrian Commercial Future Land Use Map category, adjacent lots could potentially be redeveloped with commercial or mixed use buildings in accord with the regulations of the DOWNTOWN zoning district or through planned development rezoning. The recommended conditions clearly restrict the use to specific areas of the floor plan and prohibit any further expansion.

6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

The existing restaurant use has already received a variance related to parking requirements, and was required to comply with lighting and other similar requirements set forth in LDC Chapter 34 at the time of remodeling. The consumption on premises of alcoholic beverages use, as conditioned, will be required to comply with the applicable standards in LDC Chapter 34, Article IV, Division 5, for consumption on premises in a restaurant regardless of the type or series of state license. The appropriate limitations on an outdoor seating area for consumption on premises that is allowed by special exception are for Town Council to determine through the hearing process, during which process they should find that the conditions attached are reasonably related to the special exception requested.

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The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Joe Kosinski and second by LPA Member Chuck Moorefield, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair absent
Carleton Ryffel, Member/Chair Pro Tem aye
Chuck Moorefield, Member aye
John Kakatsch, Member nay

Bill Van Duzer, Vice Chair absent
Rochelle Kay, Member nay
Joe Kosinski aye

DULY PASSED AND ADOPTED THIS 8th day of June, 2010.

LPA of the Town of Fort Myers Beach

By: 
Carleton Ryffel, Chair Pro Tem
For: Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

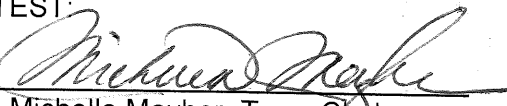
By: 
Michelle Mayher, Town Clerk

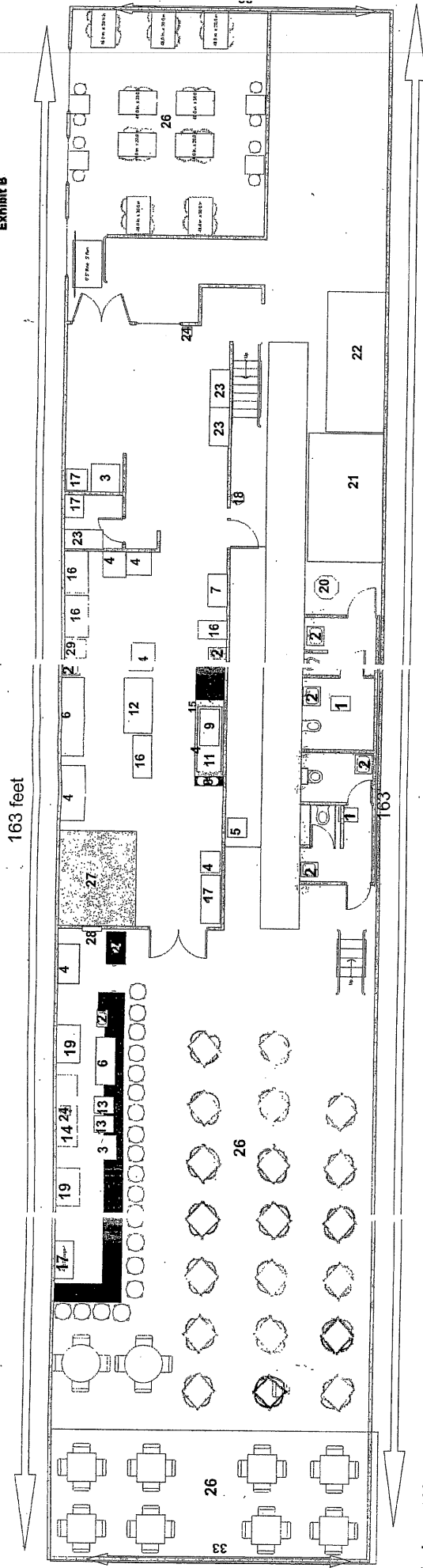
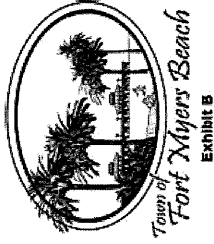
Exhibit A
SEZ2010-0007

A tract or parcel of land lying in Section 24, Township 46 South, Range 23 East, Estero Island, Lee County, Florida, said parcel being more particularly described as follows:

Commencing at the southwest corner of Block E, CRESCENT PARK ADDITION, as recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida, on the east line of Section 24, Township 46 South, Range 23 East; thence S.00°44'25"E. on said east line for 53.28 feet to a point on the southerly right-of-way line of Estero Boulevard; thence N.70°35'51"W. on said southerly line for 122.74 feet to the **Point of Beginning** of the property herein described; thence continue N.70°35'51"W. on said southerly line for 35 feet; thence S.19°24'09"W. for 284.27 feet to the waters of the Gulf of Mexico; thence southeasterly along said waters for 35.17 feet, more or less, to a point on a line perpendicular to aforesaid southerly right-of-way line; thence N.19°24'09"E. for 287.74 feet to the **Point of Beginning**.

Description based on survey by Charles D. Knight, LS6056, BWLK project no. 40032, dated 12/8/08. Basis for bearings: southerly line of Estero Boulevard bearing S.70°35'51"E.

Nemo's On The Beach



Equipment List

- | | |
|------------------------------------|------------------------------|
| 1. Ventilation Fan | 20. Grease Trap |
| 2. Hand Sinks | 21. Propane Tank Area |
| 3. Ice Machine | 22. Dumpster Area |
| 4. Refrigerator/Freezer | 23. Dry Storage |
| 5. Mop Sink | 24. POS System |
| 6. 3-Compartment sink w/drainboard | 25. Bar |
| 7. Steam Table | 26. Table & Chairs |
| 8. Burner Stove | 27. Walk In Cooler |
| 9. Flat - Top Griddle | 28. Draft Beer Taps |
| 10. Fryer | 29. Steamer |
| 11. Char Broiler | 30. Portable Fire Extinguish |
| 12. Sandwich Prep Table | |
| 13. Ice Bins | |
| 14. Bottle Beer Refrigerator | |
| 15. Hood with Suppression System | |
| 16. Work Table | |
| 17. Pepsi Bag N Box System | |
| 18. Water Heater | |
| 19. Bottle Chillers | |