

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2011-001
FMBSEZ2010-0005 (Surf Club Resolution)

WHEREAS, applicant Cermak's Surf Club, LLC., by and through Bruce Cermak, owner (collectively "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 within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, the subject property is located at 1167 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0150E.001A and the legal description of the subject property is Lot 1, Block E, CRESCENT PARK ADDITION, recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida,

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on January 11, 2011; 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 a 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 outdoor consumption on premises in the DOWNTOWN zoning district, ***with such approval subject to the following conditions.***

RECOMMENDED CONDITIONS OF APPROVAL:

- 1. The area of the subject property used for outdoor consumption on premises must be confined entirely to the proposed deck shown on the site plan attached hereto and incorporated herein by reference as Exhibit B. This area must be enclosed by a 42 inch railing, except for access points, further delineating the outdoor consumption area from other areas of the subject property.*
- 2. Sales, service, and consumption of alcoholic beverages must not begin earlier than 11:00 AM and must end no later than 10:00 PM each day.*
- 3. Conditions in prior approvals, including the applicant's May 29, 2009 COP (FMB COP2009-0001) will remain in effect except where such conditions have been modified by this action.*

4. *Music and other audible entertainment are prohibited before 11:00 AM and after 9:00 PM of each day in outdoor seating areas, and must comply at all times with applicable noise ordinances.*
5. *A landscaping plan is to be provided at the time of development order or permit.*

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 Comprehensive Plan notes in the Consensus on Commercial Uses: "The present concentration of commercial uses in the Times Square area is good for Fort Myers Beach. Despite severe congestion during peak season and a general seediness that had been developing, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today's floodplain regulations. The recent CRA improvements have sparked a renewed interest in Times Square among most islanders and has spurred a healthy movement to upgrade existing buildings."

Also, as contemplated in the Comprehensive Plan, the Times Square area (Downtown Core) has continued to emerge as a vibrant urban core for the Town. Therefore, the area can support a more intensive mix of uses which is consistent with the applicant's request.

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

The applicant's request for outdoor consumption on premises is fitting with the vision for the area. The subject property is located in the Times Square area (Downtown Core). The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings."

Further, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Times Square area (Downtown Core) as a "nucleus of commercial and tourist activities" with pedestrian oriented commercial uses that enhance the experience of both the resident and visitor. Again, the applicant's request is consistent with this vision, by providing additional venue for the enjoyment of the outdoor environment of Fort Myers Beach.

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

The very nature of this application indicates that the requested use of outdoor consumption on premises is not a use allowable by right on the subject property. It is however, a use permitted by special exception. The applicant's request is appropriate at this location due to the subject property's location in the Times Square area (Downtown Core) and is consistent with the goals, objectives, policies and intent of the Comprehensive Plan; which describes a vibrant tourist commercial district.

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

The proposed outdoor consumption application will have virtually no negative effects on environmentally critical areas and natural resources. The subject property is within an existing commercial district and the proposed deck is to be located on an area of the site that was previously disturbed.

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 subject property and the area immediately surrounding it are within the Pedestrian Commercial future land use category. The Comprehensive Plan's vision for the Times Square area (Downtown Core) encourages commercial uses be maintained and/or increased, including outdoor cafes. Staff feels the applicant's request is compatible with the area and its vision.

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 outdoor consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including but not limited to Sections 34-678(7)(e)(1), 34-678(7)(e)(4), and 34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Van Duzer** and second by LPA Member **Ryffel**, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	Aye	Bill Van Duzer, Vice Chair	Aye
Carleton Ryffel, Member	Aye	Rochelle Kay, Member	Aye
Joe Kosinski, Member	Aye	John Kakatsch, Member	Aye
Hank Zuba, Member	Aye		

DULY PASSED AND ADOPTED THIS 11 day of January, 2011.

LPA of the Town of Fort Myers Beach

By: Joanne K. Shamp
Joanne Shamp, LPA Chair

Approved as to legal sufficiency: ATTEST:

By: Marilyn W. Miller
Marilyn Miller, Esquire
LPA Attorney

By: Michelle Mayher
Michelle Mayher, Town Clerk